No. 689

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1923.

John C. (J. C.) Walton, - - - - - - *Appellant,*

versus

The House of Representatives of the State of Oklahoma, and its speaker, W. D. McBee, Isaac W. Gray, Chief Clerk, and the Board of Managers, to-wit, Wesley E. Disney, James R. Tolbert, D. A. Stovall, T. H. Wren, W. J. Otjen, Jess L. Pullen, and Leslie E. Salter; M. E. Trapp, Lieutenant Governor, and the Knights of the Ku Klux Klan or Invisible Empire of the State of Oklahoma, and N. C. Jewett, the Grand Dragon and Chief Executive Officer of said Association, *Appellees.*

BRIEF FOR APPELLANT.

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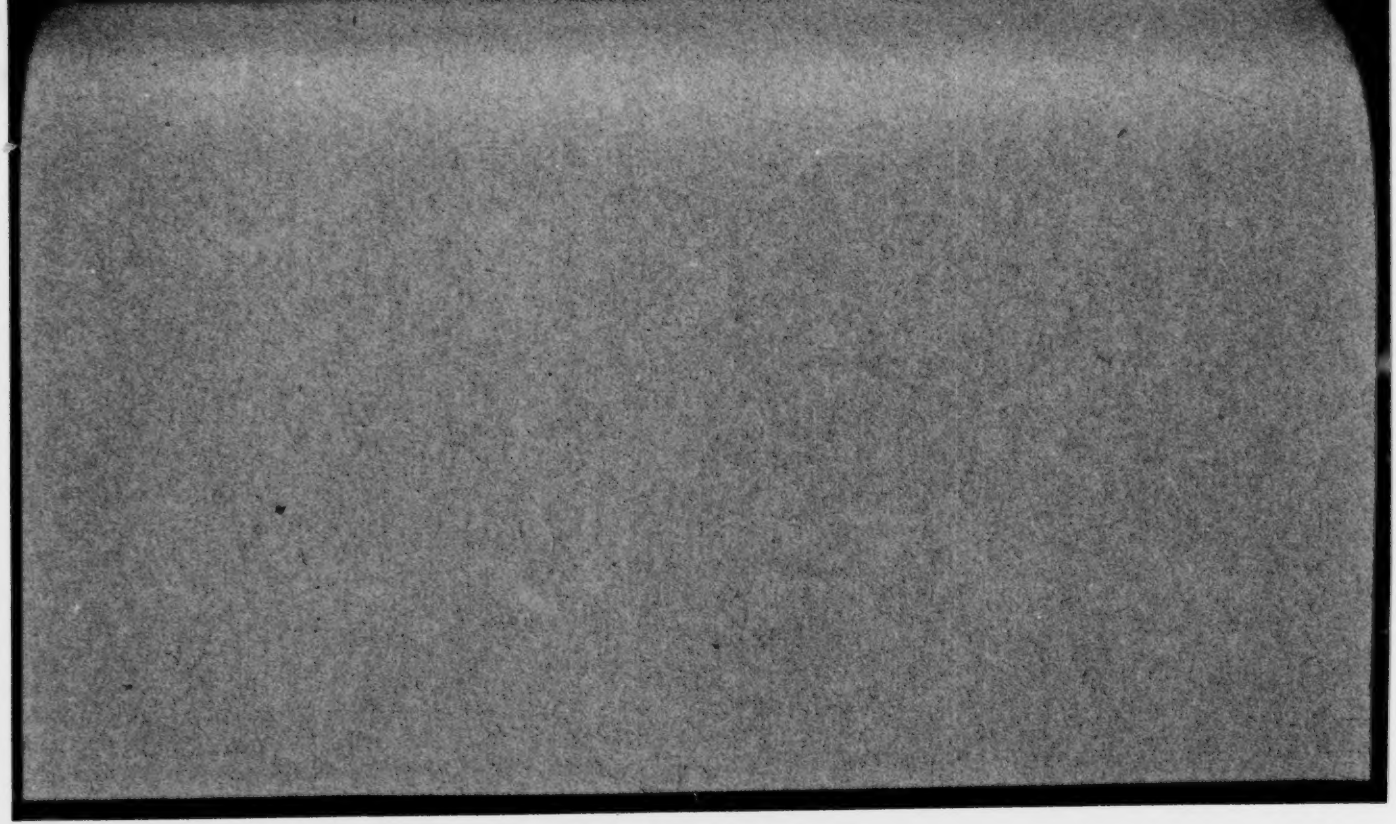

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BRIEF FOR APPELLANT.

Abstract of Record.

The appellant, John C. Walton, filed his bill of complaint November 6th, 1923, in the United States District Court for the Western District of Oklahoma

praying for injunctive relief against appellees. Temporary restraining order was denied. Thereafter on November 21st, 1923, supplemental bill of complaint was filed and said cause was further heard by the court for a temporary injunction upon the original and supplemental bills of complaint, appellees having filed their motion to dismiss said cause upon the grounds among others that the court was without jurisdiction as a court of equity to grant the relief prayed for, which motion to dismiss was by the court sustained and decree rendered dismissing appellant's original and supplemental bills of complaint on the grounds that a court of equity was without jurisdiction to entertain said suit or to grant the relief prayed for. (Tr., p. 1.)

1st. In substance the original and supplemental bills of complaint averred that the appellant was the duly elected, qualified and acting Governor of the State of Oklahoma.

2d. That theKnights of the Ku Klux Klan is a National Organization with its chief offices in the City of Atlanta, Georgia; that the Knights of the Ku Klux Klan of the State of Oklahoma is a branch of said National Organization with its chief offices in Oklahoma City, Oklahoma. (Tr., p. 1.)

3rd. That the House of Representatives of the State of Oklahoma is authorized under the law to present impeachment charges against elective state officials, including the Governor.

4th. That said House of Representatives did on October 26th, 1923, present and file with the State Senate pretended Articles of Impeachment, charging appellant with various crimes committed while in office; that the Board of Managers of said House of Representatives are now wrongfully and unlawfully proceeding against Appellant upon certain articles of impeachment to remove him from office; that said Impeachment Court had no jurisdiction and that said Articles of Impeachment were void for the reasons hereafter alleged. (Tr., p. 2.)

5th. That the said invisible empire and its members have for the two years past been engaged thoroughout the State of Oklahoma in pretending to enforce the criminal laws of the state; that they have in disguise and secretly by means of armed and disguised mobs condemned many persons to physical punishment either with or without trial in their own jurisdiction; that they have selected hundreds of persons and have visited upon such persons so selected punishment to their person, property and reputation. That said depredations include the crimes of riot, arson, maiming, felonious assault, perjury and murder. (Tr., p. 2.)

6th. That the Knights of the Ku Klux Klan or "Invisible Empire" has caused many of their members to be elected to the offices of county attorney, sheriff, judges of courts, town and city officials throughout the State of Oklahoma, and that such officers were unfaithful to their official oath and instead of render-

ing service and obedience to the laws of Oklahoma have rendered their allegience and obedience to the command of said "Invisible Empire" to the end that the members of said organization who had been guilty of crime, should be protected from the consequences of their acts and that such unlawful and felonious practices should be perpetrated and uninterrupted by the enforcement of the laws of the state. (Tr., pp. 2-3.)

7th. It is charged in the bill that the oath required to be taken by the members of the Ku Klux Klan is in conflict with the oath to support the constitution and laws of the Federal and State Governments and that the said Invisible Empire is a "super-government" operating throughout the State of Oklahoma. (Tr., p. 3.)

8th. That in addition to the other officers of the State government, that the Attorney General, and about 90% of the officers of the national guard and between 20 and 25% of the privates are members of said organization; that on account of the super-government or "Invisible Empire", the appellant as Governor, was unable to obtain the obedience of the peace officers in the purposes of punishment and prevention of said crimes through the ordinary channels of justice and he ascertaining that said crimes were continuing without interruption and with complete immunity and that the officers were either unwilling or unable to apprehend and try the persons guilty of said crimes, he caused martial law to be declared, specially in certain counties, and generally throughout the state and

by such means was able to detect and identify many of the persons, members of the "Invisible Empire", guilty of said depredations and prosecutions were commenced. Some of the members were found guilty and imprisoned and others were arrested and were exposed to the danger of conviction and punishment, including the defendant Jewett, the grand dragon. (Tr., pp. 3-4.)

9th. That as a result of declaring martial law various newspapers and business men became bitterly antagonistic to appellant and by means of inflamatory articles in certain newspapers, caused the minds of the people to become inflamed against the appellant, especially in the capital city, where the impeachment court was in session. That the members and officers of the Knights of the Ku Klux Klan including the defendant Jewett, as chief executive officer, took advantage of this condition and confederated and conspired with other people opposed to martial law, including some of the leading newspapers, which had the effect of exciting and further inflaming the minds of the people against the appellant. (Tr., pp. 4-5.)

10th. It is further charged, that the appellant as Governor convoked the legislature in extra-ordinary session for the purpose only of passing appropriate laws to regulate the operation of the Knights of the Ku Klux Klan and its members and to prevent further depredations against the citizens of the state and the violation of its laws. That under the constitution the Legislature was limited in its action to the pur-

poses set out in the proclamation or subjects which might be specially submitted to it by the Governor, and that the only subject submitted to the Legislature for consideration was the subject of the enactment of laws regulating the Klan operations.

11th. It is further charged, that a majority of the members of the Court of Impeachment were members of the Ku Klux Klan and who conspired with other members of said court and certain members of the House of Representatives and entered into an agreement and understanding in advance of the convening of the court that the said appellant should be removed from office without consideration of the facts and the law and to proceed in accordance with and pursuant to said conspiracy, agreement and understanding and have a trial of the appellant in form only and as a result thereof unlawfully remove him from office as Governor. (Tr.,pp. 6-7.)

12th. That the defendant, the Ku Klux Klan and members of said organization and defendant, Jewett, Chief Executive Officer, caused appeals to be made by letters, telegrams and personal communications from many members of said association to the members of the House of Representatives and members of the Court of Impeachment commanding said members who were members of the Court of Impeachment to proceed with dispatch and certainty to remove appellant from the office of Governor. (Tr., pp. 6-7.) That large sums of money had been obtained by the Knights of the Ku Klux Klan and its chief

executive officer, from the membership of the said organization to be corruptly and unlawfully used in carrying forward the conspiracy to the end that the appellant might be removed from said office by the Court of Impeachment. (Tr., pp. 6-9.)

13th. That in the capital city where said Impeachment Court was holding its session that the membership of the "Invisible Government" would number six thousand. That said chief executive offices of said organization are located in the City of Oklahoma City, Oklahoma, and all orders were made and dispatched by said chief executvie officer to the subordinate officers and members of the Knights of the Ku Klux Klan throughout the state. That a large number of the members of said organization in said capital city during the present session of the legislature were very active and great fear, excitement and passion existed as a result thereof. That such fear, excitement and passion surrounded constantly the members of said Court of Impeachment, extended to said court itself and to many of its members so that they were under the influence of passion and prejudice against the appellant and under the fear of the defendant, the Knights of the Ku Klux Klan, and its practices of secret and violent punishment so that the said members of said court were dominated and controlled and will be dominated and controlled completely in their consideration of said cause and their acts as members of said court, by fear, passion and

prejudice and physical domination of the said defendant, the Ku Klux Klan. (Tr., pp. 6-7.)

That during the trial of appellant in the Senate Court while the court was in session, appellant received a threat in writing demanding his resignation as Governor and threatening that if he should not resign, his life would be taken. That a great many threats to take appellant's life were communicated to him prior to and during said trial, which threats were a part of the conspiracy for the purpose of intimidating the appellant, preventing him from defending said cause. (Tr., pp. 5-6.)

That on account of such influence and domination which had already operated upon the members of the House of Representatives in the presentment of the Articles of Impeachment, the said Court of Impeachment is without jurisdiction or power to proceed against the defendant.

14th. That more than a majority of the members of the House of Representatives were members of the criminal organization, the Ku Klux Klan, and had through one Jess L. Pullen, a member of the House of Representatives and of the said secret and criminal organization, set on foot by certain letters communicated to other members of the House of Representatives, who were also members of the secret and criminal organization, a conspiracy to cause the legislature of the state to convene in extraordinary session for the purpose of causing pretended articles of

impeachment to be filed with the senate to the end that the senate when organized as a Court of Impeachment might pretend to try the appellant and remove him from office of governor of the state. (Tr., pp. 7-8.)

15th. That said members of said secret and criminal organization who were members of the House of Representatives confederated and conspired together and under an agreement, caused to be presented against appellant to the senate, its pretended Articles of Impeachment and thereafter pursuant to said conspiracy and confederation presented the same to the senate as aforesaid, and the state senate did pursuant to said conspiracy and confederation pretend to enter an order suspending the appellant from office of governor of said state and thereby to obstruct and prevent him from exercising the duties, which order was made pursuant to said agreement and conspiracy hereinbefore set out for the purpose and to the end of removing the appellant from the office of governor.

16th. It is further averred that carrying out said conspiracy prior to the entering upon the pretended trial the Court of Impeachment made and entered the following rule:

> "*Sec. 3.* Any person before the court who shall file or present for filing any pleadings or who shall make any statement or remarks designed in disrespect toward or in conformity of the court or any member thereof, may be termed guilty of contempt of court, and be expelled from

the court room, and otherwise punished as the court may direct." (Tr., p. 9.)

17th. That having information that a majority of the members of said Court of Impeachment were members of the Ku Klux Klan and having conspired and confederated in advance to proceed with a trial in form only for the removal of appellant, on the 1st day of November, 1923, he tendered for filing his verified motion challenging the qualifications of the majority of the members of said court on the grounds that they were members of the said Ku Klux Klan and had entered into a conspiracy and confederation for the purpose of pretending to find appellant guilty and to enter a judgment removing him from office. (Tr., p. 9.)

That said court by an order refused appellant the right to examine members of the court or to produce other testimony showing the disqualifications of certain members and refused to hear or consider said motion.

18th. That he thereafter filed his motion with the court praying that the Articles of Impeachment be quashed on the grounds that the same were found and presented pursuant to an agreement and conspiracy entered into by a majority of the members of the House of Representatives; that by reason thereof the Impeachment Court acquired no jurisdiction over the subject matter of appellant. That the court, without testimony or a hearing arbitrarily struck the

said motion to quash and refused to consider the same. (Tr., pp. 9-10.)

19th. It is further charged in the bill that the court adopted Rule 18, as follows:

> "*Sec. 18.* No member of the court shall be called as a witness to testify on behalf of the House of Representatives or the respondent." (Tr., p. 10.)

20th. It is further charged that under the Constitution of the State of Oklahoma, the Senate or Court of Impeachment was without power to suspend the appellant as Governor from his office before trial and conviction. That he was deprived of his salary of $4500.00 per annum, and the defendant, M. E. Trapp, Lieutenant Governor, was wrongfully attempting to usurp the duties of governor and depriving the appellant of his constitutional rights in the premises.

21st. It is charged that the acts of the House of Representatives in presenting said Articles of Impeachment as a result of a conspiracy and the action of the Court of Impeachment entertaining the same and in refusing to permit appellant to challenge the qualifications of members of the court and denying him the right to call as witnesses the members of the court, and to arbitrarily refuse to entertain said motion to challenge the qualifications of the members of said court, and in rendering the judgment of removal, deprived him of equal protection of the law and the due process of law, secured to him under the Fourteenth Amendment to the Constitution of the United States. (Tr., pp. 10-11.)

22d. Thereafter on the 21st day of November, 1923, and prior to the hearing of said application for a temporary injunction and the entry of the judgment complained of, by leave of the court, appellant re-filed his original bill of complaint and filed his supplemental bill of complaint where in substance, it was charged, that during the pretended trial his constitutional rights were disregarded, due to the fact that the general rules of evidence governing such trial and governing trials in criminal proceedings, were from time to time changed and wholly disregarded and that the court during the trial changed the general and fundamental rules of evidence affecting appellant's fundamental rights under the law of the land. (Tr., pp. 14-15.)

23d. It is further charged in the supplemental bill of complaint that since the filing of the original complaint, the said appellees pursuant to the original conspiracy and confederation between the defendants, as set out in his bill of complaint and to carry out said conspiracy to the end that it was made to appear that appellant was having a trial, whereas in truth and in fact said Court of Impeachment proceeded only pursuant to the conspiracy and confederation to the end appellant might be removed from his office as governor of the state without a real trial upon the law and facts but only a trial in form.

24th. That as a result of said wrongful proceedings and pretended trial, the Court of Impeachment on the 19th day of November, 1923, pursuant to said

conspiracy and agreement pretended to render and enter judgment against the appellant convicting him on various and sundry charges, removing him from office as governor, depriving him of his salary of $4500.00 per annum. That the said appellees are threatening to carry out and execute said judgment by ousting appellant from his office by force of said judgment, which is wholly void and is the result of said agreement and conspiracy.

25th. That the complainant is without adequate and complete remedy at law and has no remedy except by injunction and if not enjoined, defendants will proceed to execute said void judgment by removing complainant from his office, depriving him of its privileges, immunities, emoluments and depriving him of his property and denying to him due process of the law and the equal protection of the law secured to him under the Fourteenth Amendment to the Constitution of the United States.

Upon the hearing of the original verified bill, the court on November 7th, 1923, filed a memorandum opinion denying a temporary restraining order. (Tr., p. 15.)

On the 20th day of November, 1923, appellees filed their motion to dismiss the original and supplemental bills of complaint, which motion as to the first and second grounds was by the court sustained for lack of jurisdiction in the court to hear and determine the subject-matter. (Tr., pp. 16-17.)

On November 21st, the court entered a decree dismissing both the original and supplemental bills. Certificate of the trial court certifying to the effect that the bill was dismissed solely on the grounds of jurisdiction was filed. (Tr., pp. 17-18.) To the action of the court and the entry of said decree the complainant duly excepted.

ASSIGNMENT OF ERRORS.

Appellant filed two assignments of error, to-wit:

1st. *The United States District Court for the Western District of the State of Oklahoma erred in dismissing complainant's bill of complaint and his supplemental bill of complaint on the grounds and for the reason that said court had no jurisdiction in equity to grant the relief prayed for or any part thereof.*

2d. *That the said District Court for the United States for the Western District of Oklahoma erred in refusing to take jurisdiction of said proceeding and in failing to entertain the same for the purpose of granting the relief prayed for in said original and supplemental bill of complaint.* (Tr., p. 19.)

STATEMENT OF THE CASE.

An epitome of the grounds of relief is that appellant claims, that in his war against the violent depredations of the Knights of the Ku Klux Klan, he incurred the bitter hostility of its officers and members, both nationally and in the state, as a result of which, it was decreed that he should be removed from office to prevent their prosecution and interference with further mob violence.

2d. That a majority of the members of both houses of the legislature were members of this criminal organization; that as Governor he convoked the Legislature in extraordinary session for the purpose of enacting legislation removing the mask, and making public, the membership of the Knights of the Ku Klux Klan, and preventing further mob violence.

3d. That a majority of the members of the Knights of the Ku Klux Klan in the House of Representatives conspired together and with other members of the Klan organization and members of the Klan in the senate, to file articles of impeachment against appellant and to remove him from office, and that the majority of the members of the senate conspired and agreed in advance to enter an order removing the appellant as Governor without regard to the evidence or the law, and organized a Court of Impeachment to carry forward their conspiracy.

4th. That pursuant to said conspiracy and agreement, among the majority of the members of the Court of Impeachment, the court accorded appellant a trial in form only; that the members of the court were completely dominated by said conspiracy, prejudice, excitement, passion, intimidation, and influence, of the officers and members of the Klan organization, and entered a judgment in form only removing appellant from his office unlawfully.

5th. That the defendants were seeking to execute said pretended judgment and would wrongfully interfere with and forcibly remove complainant from his office if not granted the relief prayed for. That he had no adequate remedy at law and in fact was otherwise without remedy in the premises.

PROPOSITIONS OF LAW.

The admitted facts in the record make applicable the following propositions:

1st. ***The possession, title and rights vested in complainant as Governor, there being no contest over or question as to his title to the office involved, other than an alleged forfeiture, are such rights as will be protected against forcible and wrongful removal under a void judgment made and entered as a result of a conspiracy and in violation of the State and Federal Constitutions.***

2d. ***A Federal Court has no jurisdiction in equity generally, where a contest over or the title to a state office or a question of removal of an officer in accordance with state law, is involved, yet such court will lend its aid to protect a complainant in possession of and title to his office against a wrongful interference or removal under a void judgment, which involves complainant's Federal constitutional rights.***

3d. ***A court of equity has jurisdiction to entertain and adjudicate upon the subject-matter when any actionable rights are involved and where there is no remedy at law and even when the remedy at law is not adequate or complete. Where there is a wrong, equity will furnish a remedy. A Federal Court in equity has jurisdiction in such case where the complainant's constitutional rights are invaded.***

4th. *While a Federal Court in equity will not enjoin proceedings in a state court generally, it will enjoin the execution of a void judgment after the suit is ended when complainant has no adequate and complete remedy at law.*

5th. *Where the issue involved is not a contest over the title to an office, but is a question of forfeiture on account of alleged violation of specific grounds provided in the state constitution and the trial provided for, is before a court and the judges are required to be sworn to try the cause according to the law and the evidence, then the subject-matter and the trial are judicial and not political.*

A R G U M E N T .

General Observations.

In the outset we desire to make clear that this is not a suit involving a contest or title to a state office. Neither is it a suit seeking to restrain a court or other state officials in removing the Governor from office. But this is a suit to enjoin the enforcement of a void judgment of forfeiture and from interference with the possession, rights, and duties of the complainant in his office as Governor, until he is declared to have forfeited his title and right upon the grounds and in the manner provided by the state law. Complainant seeks to restrain the enforcement of a void judgment entered as a result of a conspiracy, which inheres, in fraud, and which was also entered as a result of a pre-judgment; an agreement or an intrigue inspired in a "super-government" prior to the initiation of the proceedings. The pretended judgment was not the result of a trial but of a form of a trial; a subterfuge, a mere pretense. The pretended judgment declaring a forfeiture is not a judgment at all: It is no more nor less a judgment than if entered by a determined mob assembled in the name of the "Invisible Empire", instead of in the name of the state. The grounds of the relief prayed for come clearly within reservations or excetions made in practically all the cases announcing the general rule, both in the

state and Federal courts, such "as a rare case" or "except under special circumstances and when necessary for the protection of rights of property," will a Federal court grant relief. No one would question the jurisdiction of the court sitting in equity to grant relief, we dare say, to restrain the execution wrongfully and by force of a pretended judgment showing on its face, it was made and entered by the "Invisible Empire" in the Imperial Palace at Atlanta. Under the admitted facts alleged, it is no more a valid judgment than if such were the case.

May we also make clear that we do not claim that the Federal court, sitting in equity, may supervise or sit as a court of error, over the courts of the states, for they have no such power. We concede that if the matters complained of constitute mere irregularities and errors only, as were the basis of jurisdiction *In re Sawyer*, 124 U. S., page 200, or in *White* v. *Berry*, 171 U. S., page 366, *White* v. *Butler* and *White* v. *Ruckman*, 171 U. S., page 379, then the judgment of the trial court would have to be affirmed.

We have proceeded upon the theory that the complainant was possessed of a valuable property right, one that is actionable and under the protection of the laws of his country and that he cannot be divested of such right or adjudged to have forfeited the same except by a judicial trial, in the manner provided by the constitution and the laws of his state.

That he has had no trial except *in form* and that he has been denied due process of law. We have been led to believe that the facts bring his case within the principle recognized in the case of *Franks* v. *Mangum*, 237 U. S., page 309, and within the rule embodying such principle sought to be put in force by the distinguished petitioner in *Franks* v. *Mangum*, by use of the rule hereto to believe that the facts bring his case within the rule referred to in the opinion in the case of *Moore* v. *Dempsey*, lately decided by this Court, found in Advance Sheet No. 10, page 345, to the Law Edition of date March 15th, 1923, not yet officially reported. In the latter cases, the proceedings were upon petitions in writs of *HABEAS CORPUS*, which writs were denied on jurisdictional grounds or more accurately speaking because the proceedings were held not to be absolutely void. Of course, this Court would not have reversed the judgment in the latter case, except the petition for the writ disclosed facts on its face making the judgment under which the petitioners had been condemned, utterly void. Neither can we succeed except the alleged facts show the proceedings resulting in the judgment complained of was the result of fraud and a conspiracy or to be void on account of the court not acuiring, or else loosing jurisdiction after acquiring same. It appears to us in principle the rule announced in the *Franks* case would apply; that the distinction is in the degree of punishment only.

If the complainant's case was pre-judged, then he had no trial except in form. Equity always looks beyond the form into the substance. The question as

to whether or not his case was pre-judged or proceeded as a result of a conspiracy inspired by intrigue in the secret counsels of the "Invisible Empire", in the Imperial Palace, is a question of fact which the complainant alleges under oath, and if granted an opportunity, he is ready to hazard the consequences of defeat upon a failure to establish same.

Propositions 1 and 2.

No. 1. **The possession, title and rights vested in complainant as Governor, there being no contest over or question as to his title to the office involved, other than an alleged forfeiture, are such rights as will be protected against forcible and wrongful removal under a void judgment made and entered as a result of a conspiracy and in violation of the state and Federal constitutions.**

No. 2. **A Federal court has no jurisdiction in equity generally, where a contest over or the title to a state office or a question of removal of an officer in accordance with state law, is involved, yet such court will lend its aid to protect a complainant in possession of and title to his office against a wrongful interference or removal under a void judgment, which involves complainant's Federal constitutional rights.**

Propositions one and two being closely related and controlled by practically the same state of facts and authorities, we will present and argue them together.

The admitted facts disclosed by the bill of complaint, make the above propositions applicable. The question presented is, does these statements embody sound principles of law.

We insist that the cases which we are citing under these propositions directly or by necessary implica-

tion sustain the doctrine announced. *Marbury* v. *Madison,* 1st Cranch 137; *Kennard* v. *Loinsiand,* 92 U. S., p. 489; *Missouri* v. *Andriano,* 138 U. S. 496; *Foster* v. *Kansas,* 112 U. S. 201; *Boyd* v. *Nebraska,* 138 U. S. 155; *Wilson* v. *North Carolina,* 169 U. S. 586.

In *Marbury* v. *Madison, supra,* Chief Justice MARSHALL said:

> "But when the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed. * * * Mr. Marbury, then, since his commission was signed by the President and sealed by the Secretary of State, was appointed; and as the law creating the office, gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable, *but vested in the officer legal rights which are protected by the laws of his country.*"

The same rule was adhered to in the *Case of Cummings* v. *The State of Missouri,* 71 U. S. (4 Wall.), page 277. The Court, speaking through Mr. Justice FIELD, stated:

> "We do not agree with the counsel of Missouri, that to punish one is to deprive him of life, liberty, or property and to take from him anything less than these is no punishment at all. The learned counsel does not use these terms—Life, Liberty, and Property—as comprehending every right known to the law. He does not include under 'Liberty' freedom from outrage on the feeling as well as restraints on the person. He does not include under property, those estates which one

may acquire in professions, though they are often the source of the highest emoluments and honors. The deprivation of any rights, civil or political previously enjoined may be punishment; the circumstances attending and the causes of the deprivations determining this fact. *Disqualification from office may be punishment, as in cases of conviction upon impeachment.* Disqualification from the pursuits of a lawful avocation, *or from position of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator or guardian may also, and often has been, imposed as punishment.*" (Italics ours.)

In the foregoing case, the court was applying the provision of the Federal Constitution, prohibiting the states from enacting laws in the nature of "bills of attainder" or "*ex post facto* laws," as applied to certain professions and professional men in the State of Missouri. The attorney of Oklahoma is now making the same contention as did the attorney of the State of Missouri.

Another case more familiar to the Court than to the profession generally, is that of *Ex parte A. H. Garland,* 71 U. S. (4 Wall.) page 333. This case involved an Act of Congress restricting the rights of Mr. Garland in performing his duties as attorney, while it is true the office of a lawyer may be more remunerative generally but seldom carry with it as much honor and trust as the office of Governor, or the office of Supreme Court Justice, like the Louisiana case.

The Court, again speaking through Mr. Justice FIELD, to the subject of the character of an office of an attorney, said:

> "They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court, after opportunity to be heard has been afforded. *Ex parte Heyfron*, 7 How. (Miss.) 127; *Sletcher* v. *Daingerfield*, 20 Cal. 430. Their admission or their exclusion is not the exercise of mere ministerial power. It is the exercise of judicial power and has been so held in numerous cases. * * * In *Ex parte Secombe*, 19 How. page 9 (60 U. S. 40, 15:565). A mandamus to the Supreme Court of the Territory of Minnesota to vacate an order removing an attorney and counsellor was denied by this court on the ground that the removal was a judicial act. * * * The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. * * * It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency."

In harmony with the principles announced in the foregoing decisions, this Court in *MacMath, Administratrix, Appt.*, v. *United States, Appellee*, reported in the 248 U. S., page 151, speaking through Mr. Justice BRANDEIS wherein the right to the profits of an office was involved said:

> "When an office with a fixed salary has been created by statute, and a person duly appointed to it has qualified and entered upon the discharge of his duties, he is entitled, during his incumbency, to be paid the salary prescribed by statute;

and effect will not be given to any attempt to deprive him of the right thereto, whether it be by unauthorized agreement, by condition, or otherwise. United States v. *Andrews,* 240 U. S. 90, 60 L. E. 451, 36 Sup. Ct. Rep. 349; *Glayey* v. *United States,* 182 U. S. 595." (Italics ours.)

This rule does not in the least conflict with the rule to the effect that either Congress or the state legislatures may abolish a public office or change the emoluments thereof, when not prohibited by constitutional restriction. It simply means so long as the office remains unaffected and the people have elected, or the appointing power has appointed a person to fill and perform the duties devolving upon the office, entitling him to the emoluments, honor and immunities incident thereto, he may not be removed wrongfully and contrary to law. Again this Court said in the late case of *Nicholas* v. *United States,* 257 U. S. 71, speaking through Mr. Justice DAY:

> "While one inducted into office or public employment is entitled to the privileges or emoluments thereof, until legally separated therefrom, he is not absolved from the duty of diligence upon his part in the assertion of his right to the office, or to the compensation attached thereto. Public policy requires that the government shall be seasonably advised of the attitude of its officers and employees attempted to be displaced when they assert illegal removal or suspension as a basis for the recovery of the *office* or its emoluments. This is necessary in order that proper action may be taken in the public interest, as well as that which is required to vindicate the rights of one wrong-

> fully removed from the public service. This principle was recognized in *United States ex rel Arant* v. *Land*, 249 U. S. page 367, 63 L. Ed. 650, 39 Sup. Ct. Rep. 293. That case was one in mandamus to compel the restoration of an officer, who alleged that he was wrongfully removed without notice or an opportunity to be heard, and it was held that a delay of twenty months barred by laches his right to the writ." (Italics ours.)

We have conceded, and do concede for the appellant, that the office of the Governor of the State of Oklahoma, or any other public office, must be accepted by its incumbent with such conditions and limitations as the law may have attached to it, and it must be conceded, as it was held in *Taylor* v. *Beckham* referred to, that the methods and machinery by which the people of a state declare and evidence their choice of candidates for their public offices are subject to the control of the state itself.

And it may be also conceded that the holder of a public office has no such contractual or vested right in the office or its emoluments, as that the state may not, unless restricted by its constitution, abolish the office, or take away its emoluments. But the office of Governor of Oklahoma in the hands of the petitioner is not exposed to any conditions whatever. It is held like all other property by virtue of the law; and each is subject to be forfeited for the reason and in the manner provided by law; indeed no property can be held except by virtue of the law. Before people surrendered any of their rights to society, and became subject to public law, there was no property.

The office of Governor of Oklahoma is subject to forfeiture by the commission of offenses defined in the Constitution of the State, and not otherwise.

The jurisdiction to determine when the grounds of forfeiture have been committed is vested by the Constitution in the Court of Impeachment, and by the judgment of that court, alone, proceeding upon the impartial consideration of the facts and the law, can that title be taken away.

The people of the State of Oklahoma have not confided to the members of the legislature, upon political considerations or otherwise, the right to set at naught the sovereign will of the people in the selection of their Governor. It is not confided to the legislature, as it has no control over that subject. It is confided to the Court of Impeachment which by a coincidence is made up partly of the members of the Upper House of the Legislature, jurisdiction to hear and determine when the Governor has, or has not forfeited his title to the office. If this body acts by virtue of a previous agreement and pre-judge his case or pursuant to a conspiracy its acts are fraudulent, without authority and void.

There is a wide distinction between the *Taylor* v. *Beckham* case, referred to and the case at bar. There the proceedings were for the purpose of determining who had been legally elected to the office in accordance with the state law. The legislature, in the first instance was given authority to decide this issue. Both

as to the subject-matter and the procedure, might appropriately be termed political rather than judicial action. Until the contest period had expired no final certificate could issue to either of the contending parties. When the contest was instituted, it might be said that the machinery of the state so designated to hear and decide same, was an advanced department of the election machinery, the purpose of which to effectuate the election by declaring the result of the contest and issuance of the election certificate.

Until this contest was determined and the certificate issued, there were no rights vested or property rights in either of the opposing candidates, which could be subject to forfeiture. Materially dissimilar from the instant case, in that there was no question as to appellant's title (waiving the question of forfeiture) to the office with all of the incidental rights and all of which rights he was entitled to hold and enjoy for four years, as against the will of the people who elected him, expressed directly or through their representatives, unless and u n t i l forfeited; which grounds of forfeiture must be alleged and the truth of which determined as the result of a judicial trial and not otherwise.

Coming to the third proposition, we are persuaded that if we have successfully sustained the first two propositions, then it would seem to need but little more than to state the rule on which the third is based.

Third Proposition.

A court of equity has jurisdiction to entertain and adjudicate upon the subject-matter when any actionable rights are involved and where there is no remedy at law and even when the remedy at law is not adequate or complete. Where there is a wrong, equity will furnish a remedy. A Federal court in equity has jurisdiction in such cases where the complainant's constitutional rights are invaded.

If the complainant was vested with an actionable right then he certainly had or has a legal remedy either at law or in equity. Unlike the case *In re Sawyer*, 124 U. S. 200, for there it was pointed out that Sawyer had an adequate legal remedy specially provided, which he did not attempt to follow. Here we have exhausted every avenue at law without avail. We demanded a trial in the first instant but we were met with a conspiracy initiated in the secret chambers of the Palace of the Imperial Wizard in Atlanta. The representatives of this "Super-Government" eminating from Atlanta, assembled in the name of the state, had already pre-judged complainant's case, as he alleged under oath and which they in effect confessed by striking his motion and ordered him removed from office without a trial, except in form. This was no trial at all. It was no more a legal trial than the five negroes had in Arkansas *(Dempsy* v. *Moore, supra)*. This Court denied him the only other rem-

edy at law, which he thought he had, by the writ of *certiorari.*

The constitution and the laws of his own state furnished him a remedy, as they must necessarily provide for every citizen for every actionable grievance. It is on account of the representatives of the state acting pursuant to the officials of that more powerful "Super-Government", as is asserted, denying complainant any remedy and denying him an opportunity of a trial, which bring his case within the realm of equity jurisdiction. It is also by reason of these facts, that his Federal constitutional rights were invaded, which give him the remedy to such relief in a Federal court of equity. We think it will not be denied and can not be questioned, that one in the exclusive rightful and legal possession of the office of governor, where there is no contest involved, has such an actionable right that the laws, both state and Federal, must recognize and protect against an illegal intrusion by another and against a wrongful and illegal ouster. If this be true, and it must be so, then it goes without saying the law will give him a remedy.

We think no more appropriate language could be applied than in the words of Chief Justice MARSHALL in *Marbury* v. *Madison, supra,* where, in speaking of the remedy, it was said by the Court:

> "If he has a right, and that right has been violated, do the laws of his country afford him a remedy? The very essence of civil liberty certainly consists in the right of every individual to

claim the protection of the laws, whenever he receive an injury. One of the first duties of government is to afford that protection. In the 3rd volume of his Commentaries, page 23, BLACKSTONE states two cases, in which a remedy is afforded by mere operation of law:

> "'In all other cases', he says, 'it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit, or action at law, whenever that right is invaded.'

"And afterwards, page 109 of the same volume:

> "'I am next to consider such injuries as are cognizable by the courts of the common law. And herein I shall for the present only remark, that all possible injuries whatsoever, that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals, are for that very reason, within the cognizance of the common law courts of justice. For it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a r e m e d y, and every injury its proper redress.'

"The Government of the United States has been emphatically termed a government of laws and not men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. * * * In pursuing the inquiry, the first question which presents itself, is, whether this can be arranged with that class of cases which come under the description of *damnum, absque, injuria;* a loss without an injury.

> *"This description of cases never has been considered, and it is believed never can be considered, as comprehending officers of trust, of honor, or of profit. The office of Justice of Peace in the District of Columbia is such an office;* it is therefore worthy of the attention and guardianship of the laws. It has received the attention and guardianship. It has been created by special Act of Congress, and has been secured, so far as the laws can give security, to the person appointed to fill it, for five years. It is not, then, on account of the worthlessness of the thing pursued, that the injured party can be alleged to be without remedy." (Italics ours.)

The rule was again stated clearly by this Court in the case of *Board of Liquidation* v. *McComb*, reported in 92 U. S. 531, where after stating the rule relating to relief by mandamus to compel official action, the Court said:

> *"And when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby for which adequate compensation can not be had at law, may have an injunction to prevent it."*

This was a suit against state officers purporting to act officially. Language could not be used to state the rule more clearly. The language of Mr. MARSHALL was no more appropriate nor efficacious than was said recently by this Court speaking through Mr. Justice BUTLER, in regard to the rule in equity, in the case of *Terrance* v. *Thompson*, decided November 12, 1923, not yet officially reported. The rule for which we are contending as applicable here, was stated not

only with clearness but likewise with precision, and a large number of cases from this Court were cited. Relative to this point it was there said:

> "The unconstitutionality of a state law is not, of itself, ground for equitable relief in the courts of the United States. That a suit in equity does not lie where there is a plain, adequate, and complete remedy at law is so well understood as not to require the citation of authorities. But the legal remedy must be as complete, practical, and efficient as that which equity could afford. *Boise Artesian Hot & Cold Water Co.* v. *Boise City*, 213 U. S. 276, 281, 53 L. Ed. 796, 798, 29 Sup. Ct. Rep. 426; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 11, 12, 43 L. Ed. 341, 346, 347, 19 Sup. Ct. Rep. 77. Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal constitution wherever it is essential, in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person who, as an officer of the state, is clothed with the duty of enforcing its laws, and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a Federal court of equity. *Cavanaugh* v. *Looney*, 248 U. S. 453, 456, 63 L. Ed. 354, 357, 39 Sup. Ct. Rep. 142; *Traux* v. *Raich*, 239 U. S. 33, 37, 38, 60 L. Ed. 131, 133, 134, L. R. A. 1916-D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917-B, 283. See also *Ex parte Young*, 209 U. S. 123, 155, 162, 62 L. Ed. 714, 727, 730, 13 L. R. A. (N. S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764; *Adams* v. *Tanner*, 244 U. S. 590, 592, 61 L. Ed. 1336, 1341, L. R. A. 1917-F, 1163, 37 Sup. Ct. Rep. 662, Ann Cas. 1917-D, 973; *Greene* v. *Louisville & Interurban R. Co.*, 244 U.

S. 499, 506, 61 L. Ed. 1280, 1285, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917-E, 88; *Home Teleph. & Teleg. Co.* v. *Los Angeles*, 227 U. S. 278, 293, 57 L. Ed. 510, 517, 33 Sup. Ct. Rep. 312; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 621, 56 L. Ed. 570, 577, 32 Sup. Ct. Rep. 340; *Western U. Teleg. Co.* v. *Andrews*, 216 U. S. 165, 54 L. Ed. 430, 30 Sup. Ct. Rep. 286; *Dobbins* v. *Los Angeles*, 195 U. S. 223, 241, 49 L. Ed. 169, 177, 25 Sup. Ct. Rep. 18; *Davis & F. Mfg. Co.* v. *Los Angeles*, 189 U. S. 207, 217, 47 L. Ed. 778, 780, 23 Sup. Ct. Rep. 498.

"The Terraces' property rights in the land include the right to use, lease, and dispose of it for lawful purposes (*Buchanan* v. *Warley*, 245 U. S. 60, 74, 62 L. Ed. 149, 160, L. R. A. 1918-C, 210, 38 Sup. Ct. Rep. 16, Ann. Cas. 1918-A, 1921), and the Constitution protects these essential attributes of property (*Holden* v. *Hardy*, 169 U. S. 366, 391, 42 L. Ed. 780, 790, 18 Sup. Ct. Rep. 383), and also protects Nakatsuka in his right to earn a livelihood by following the ordinary occupations of life (*Truax* v. *Raich*, 239 U. S. 33, 37, 38, 60 L. Ed. 131, 133, 134, L. R. A. 1916-D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917-B, 283; *Meyer* v. *Nebraska*, 262 U. S. 390, 67 L. Ed. ....., Adv. Ops. p. 698, ... L. R. A. ....., 43 Sup. Ct. Rep. 625)."

May we say in the language of the Court in the case last quoted from:

"The complaint presents a case in which equitable relief may be had, if the law complained of is shown to be in contravention of the Federal Constitution."

While it is not unconstitutional law of which appellant complains, but what is more fatal, a conspiracy and at the command of a "Super-Government", the complainant was denied the benefit of the law; that he was denied the opportunity of a trial, that every sacred right guaranteed under the State and Federal Constitution in the respect complained of was willfully disregarded and denied him.

The protection of the Federal Constitution securing rights to individuals operates equally upon every state agency, who is the repository of state power. This rule was adhered to by this Court in the case of *Home Telephone and Telegraph Co., Appellant,* v. *The City of Los Angeles, et al.,* reported in the 227 U. S., page 278, wherein the second head note to the opinion the Chief Justice speaking for the Court said:

> "The probitions and guaranties of the U. S. Const., 14th Amend., are addressed to, and control, not only the states, but also every person, whether natural or juridical, who is the repository of state power."

And it was said in the body of the opinion:

> "By this construction the reach of the amendment is shown to be co-extensive with the exercise by a state power, in whatever form exerted * * * In other words, the amendment, looking to the enforcement of the rights which it guarantees and to the preventions of the wrongs which it prohibits, proceeds not merely upon the asumption that states, acting in their governmental capacity, in a complete sense, may do acts which con-

> flict with its provisions, but, also conceiving, which was more normally to be contemplated, that state powers might be abused by those who possess them, and as a result might be used as an instrument for doing wrong, provided against all and every such possible contingency."

Under the facts alleged it would appear that this language would be as applicable to the case at bar as in the case in which it was used. Of course, this statement is based upon the assumption that the rights incident to the office of govenor are such that the law will take notice of and protect.

Fourth Proposition.

While a Federal court in equity will not enjoin proceedings in a state court generally, it will enjoin the execution of a void or fraudulent judgment after the suit is ended when complainant has no adequate and complete remedy at law.

The Facts:

Accepting the allegations of the petition as true, and we assume this must be done upon a motion to dismiss, the complainant has had no trial. The state sought to adjudge a forefeiture of his office and all rights connected therewith, upon the grounds provided by the Constitution and this could be done only as a result of a judicial trial. If he were possessed of rights, which could only be forefeited as a result of a trial and judgement and if he has had no trial except in form, then confessedly he should be entitled to relief. In Vol. 5 of Pomeroy's Equity Jurisprudence, Sec. 2070 (648), the rule is stated:

> "The ground for the exercise of this jurisdiction is that there has been no fair adversary trial at law. Consequently a distinction is made between fraud, accident and mistake and the like relating to the subject-matter of the action and similar elements relating to the conduct of the suit. * * * As, where it prevents a party from asserting his rights, there is no fair adversary proceedings and euity will interfere. * * * If the judge himself is a party to the fraud, the ground for interference is especially strong."

As to a Federal Court enjoining the enforcement of a state court's judgement see case of *Simmons* v. *Southern Ry. Co.*, 236 U. S. 115, 59 L. Ed. 492, wherein Mr. Justice LAMAR speaking for the Court, after noticing the line of cases relied upon by the Attorney General in his brief in the case at bar and distinguishing the rule in those cases, the Court said:

> "But when the litigation has ended and a final judgment has been obtained, and then the plaintiff endeavors to use such judgment, a new state of facts, not within the language of the statute, may arise * * * Other cases might be cited involving the same principle, but this is sufficient to show that if in any proper case, the plaintiff holding a valid state judgment can be enjoined by the United States Court from its inequitable use, by so much the more can the Federal Court enjoin him from using that which purports to be a judgment, but is, in fact, an absolute nullity. *Marshall* v. *Holmes*, 141 U. S. page 597; *Gaines* v. *Fuentes*, 92 U. S., page 10; *Barrow* v. *Hunton*, 99 U. S., page 95."

This case should put at rest the contention that a Federal Court is without authority to grant relief in cases similar to one here.

Fifth Proposition.

Where the issue involved is not a contest over the title to an office, but involves a question of forfeiture on account of alleged violation of specific grounds provided in the state constitution and the trial provided for, is before a court and the judges are required to be sworn to try the cause according to the law and the evidence, then the subject-matter and the trial are judicial and not political.

It is admitted in the brief filed by the Attorney General on behalf of appellees, that the Impeachment Court under the state constitution was a court exercising judicial powers, so we will address ourselves mainly to the question as to whether or not the subject matter at issue before that Court was judicial in its nature or political. Of course, if it were wholly political in the ordinary acception of that term as distinguished from judicial, then it may be that a court of equity will refuse to take jurisdiction.

In the first place the grounds as cause for a forfeiture in an office is defined to be a crime, in Section 2084 of R. L. 1910, provides that:

> "A crime or public offense is an act or omission forbidden by law, and to which is annexed upon conviction, either of the following punishment:
>
> "*First. Death.*
> "*Second.* Imprisonment.
> "*Third.* Fine.
> "*Fourth. Removal from office or*

"Fifth. Disqualification to hold and enjoy any office of honor, trust or profit under this state."

Suppose the constitution had provided, that upon conviction and removal from office of the Governor he should be deemed guilty of treason, and should forfeit all his lands and personal property to the state, would his trial then be any more judicial than it now is, or would it be any less political than it is under the actual facts?

The Constitution of Oklahoma requires that the members of the court shall take an oath or affirmation to impartially try the cause. Political power, whether exercised by the sovereign or its representatives, is distinguished from judicial power by this requirement. The sovereign power of the State need not proceed in its political purposes impartially. The very nature of the power includes the right of the sovereign to pursue his will, his opinions; indeed, his prejudices, and this he may do except for constitutional limitations to any extent whatever.

On the other hand, it is inherent in the nature of the administration of justice that it shall proceed impartially. That its judgments shall be directed without bias, prejudice or pre-judgment, or agreements between the triers of the fact, or the law, in advance or neglect of the facts, or of the law.

The requirements, then, that the members of the court shall be sworn to impartially try the cause is

irreconciliably repugnant to the theory in the brief for the appellees that those who are interested in a cause, or who have already pre-judged it, who are acting under the command, or influence of a force inimical to one of the parties is, immaterial because of it being political instead of judicial, is without merit.

The purpose of the constitution must be, not only that the members of the Court be sworn to impartially try the cause, but that such oath shall be true.

The subject of the removal of officers "for cause", has usually been defined as "judicial" and that such officers could be removed only after a judicial trial. This is especially true of officers provided for by the fundamental law of the state in which instrument the causes for r e m o v a l are prescribed. The office of Governor in the State of Oklahoma falls within this class. While the governor is subject to be removed in the manner and for the causes specified in the constitution, he can only be legally removed after a judicial trial and the charges made against him are found to be true. A judicial investigation and the truth of the charges must be established according to the law and the evidence. This trial must be had, not only according to the law and the evidence, but according to the established rules, in regard to the crimes for which he is tried as well as the proceedings governing the trial. His guilt can only be established by legal and competent evidence in accordance with the settled rules governing the admission of evidence as in other trials.

The acts of the court are wholly judicial. Every inference from the subject-matter, from the law creating the court, as well as the law governing its procedure, excludes every idea of any duties or powers of the court, except judicial. This rule was emphasized by Mr. Justice FIELD in his dissenting opinion in the case of *Central Railroad Company* v. *Gallatin*, reported in 99 U. S., page 727, in part quoting from Chief Justice MARSHALL. In this case, the question under consideration was as to the validity of a certain Act of Congress requiring certain moneys earned by the Railroad Company to be deposited with the Secretary of the Treasurer, for paying certain bonded indebtedness. And in making the distinction between powers, legislative and judicial, he said:

> "The distinction between a judicial and legislative act is well defined. The one determines what the law is, and what the rights of parties are. With reference to transactions already had; the other prescribes what the law shall be in future cases arising under it. Whenever an act undertakes to determine a question of right or obligation, or of property, as the foundation upon which it proceeds, such act is to that extent a judicial one, and not the proper exercise of legislative functions. * * * And in the *Darmouth Coll.* case, Mr. Webster contended that acts, which were not the exercise of a power properly legislative, as their object and effect was to take away vested rights. He said, 'there must be a forfeiture, to adjudge upon and declare which is the proper province of the judiciary'."

Certainly that definition is applicable here. As a result of the charges if proven to be true under the law and evidence, the petitioner forfeits all. He forfeits his high office with all of its honors, rights, duties, emoluments, and immunities. By the same decree of forfeiture he is degraded and injured in his reputation and standing.

An admirable definition of acts, judicial, was given by this Court in the case of *State of Rhode Island* v. *State of Massachusetts*, 37 U. S., page 657, 9 L. Ed., page 1233, Mr. Justice BALDWIN delivering the opinion of the Court, and speaking to the question of jurisdiction as to whether the subject-matter was judicial in its nature or legislative or political, stated the rule to be:

> "We are thus pointed to the true boundary line between political and judicial powers, and questions. A sovereign decides by his own will, which is the supreme law within his own boundry (6 Peters 714; 9 Peters 748); a court, or judge, decides according to the law prescribed by the sovereign power, and that law is the rule for judgment. The submission by the sovereigns or states, to a court of law or equity, of a controversy between them, without prescribing any rule of decision, gives power to the side according to the appropriate law of the case (11 Ves. 294), which depends on the subject-matter, the source and nature of the claims of the parties, and the law which governs them. From the time of such submission, the question ceases to be a political one, to be decided by the *Sic. Volo, Sic. Jubeo*, of political power; it comes to the court to be decided

> by its judgment, legal discretion, and solemn consideration of the rules of law appropriate to its nature as a judicial question, depending on the exerises of judicial power; as it is bound to act by known and settled principles of national or municipal jurisprudence, as the case requires."

It can scarcely be controverted with any degree of reason that the subject-matter involved here is logically judicial and that the Impeachment Court, under the law in connection with the subject-matter, could only exercise judicial power.

We will briefly answer the contention of appellees, in the order in which presented.

All we have to say regarding the first proposition is, that the only question presented in the case of the *State ex rel Trapp, Acting Governor,* v. *Chambers, District Judge,* was one of jurisdiction. There was no issue made there which could in the least affect the issue here. In fact, there was no time allowed there for forming an issue. The petition was filed in the Supreme Court at 5 P. M. one day and case argued on demurrer at 2 P. M. on the next day, and decision rendered at 4 P. M. the same day. It was so unusually speedy that the court after overruling respondent's demurrer overlooked giving a few hours to further plead, and proceeded to determine the matter on the merits without any issue being joined.

Turning to the second proposition, relied upon by counsel, we frankly state that we have no quarrel

with them as to the correctness of the general rule asserted by the decisions cited, abstractly speaking.

Accepting the allegations of our Bill of Complaint as true, then the appellees were not proceeding under the state constitution and laws of the state. But to the contrary, they were acting pursuant to a conspiracy and under the command of a "super-government" and only in the name of the state. It is common knowledge that there exists such a secret political organization and also that it commits many criminal acts much worse than those charged in the complaint, so the allegations are not such, as in effect, are contended by counsel, which should be disregarded because against known physical or natural laws, historical facts, or known existing facts to the contrary and of such conclusive force, general and common knowledge that the court would be justified to disregard the general rule upon a demurrer or motion to dismiss.

A distinction may clearly be made in all the cases cited under counsel's second proposition and the cases applicable to the facts here.

Approaching counsel's third point, to the effect, that the Federal question is frivolous, he seems to be attempting to place our contention in rather a dyslogistic attitude before the Court.

We simply desire to say a few words in addition to what the authorities we cited under our First and Second Propositions show. If complainant was pos-

sessed of an actionable right, personal to himself, and if he were entitled to a judicial trial to determine the issue as to whether or not he had forfeited such rights, then we say the question is not frivolous, but is substantial.

Proposition four in counsel's brief, in our judgment, involves a more serious question than any of the others. In view of the allegations of the bill, we can not see how this contention can be sound. The two cases cited by Judge COTTERAL are clearly not in point. In one of the cases, *Jiles* v. *Harris*, the question there was wholly political and scarcely there is any room for doubt. In the other case, *Ex parte Sawyer*, it was held that he had an adequate remedy at law and this was the main point discussed and decided.

The next question argued by the Attorney General is that the bill does not contain any allegation of irreparable injury. We alleged the facts and left the conclusion to be drawn by the court.

We think it will not require an astute analytical mind to ascertain that the complainant was about to suffer, did suffer, and is suffering irreparable injury, providing, always, he was possessed of legal rights such as the law will take cognizance of and protect. If we are right under our affirmative propositions, then there is nothing in this contention of the Attorney General.

In reply to the contention and authorities cited to sustain same, to the effect that equity will not lend

its aid to allay mere apprehension of injury, we simply desire to refer briefly to two cases from this Court. In the case of *Scott* v. *McDonald*, 165 U. S. 107, 17 Sup. Ct. 262, and the very recent case of *Commonwealth of Pennsylvania* v. *State of West Virginia*, 43 Sup. Ct. 658. Here the Court in discussing this question said:

> "The second question is whether the suits were brought prematurely. They were brought a few days after the West Virginia act went into force. No order under it had been made by the public utilities commission, nor had it been tested in actual practice. But this does not prove that the suits were premature. Of course they were not so, if it otherwise appeared that the acts certainly would operate as the complainant states it apprehended it would. One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough."

Again our case must necessarily depend on the question as to whether there is any foundation whatever for judicial interference. If we had no rights then it may be said our apprehension of danger was merely a myth.

The sixth proposition in appellee's brief has been fully answered under our Fourth Affirmative Proposition and it will be unnecessary to say more here, except to remark that the cases relied upon by the Attorney General, in our judgment, do not apply.

Under the seventh point and the last one argued by appellee's counsel, it is insisted that the Federal

Courts will not determine abstract legal propositions. Right they are, and neither will state courts so far as we are advised. The facts show that the appellant, the Governor, would have two and one-half years to serve before his term would expire. Besides his salary, aggregating $11,250, upon a reversal and restoration to his office, his honor, which has been wrongfully impaired, the privileges incidental to said office and his good name are all involved and would be restored and protected also. Equity treats that as done, which should have been done, so if the District Court should have taken jurisdiction and granted the relief, if the merits had warranted, then it will be a matter of no grave difficulty for this Court to grant effective relief.

Conclusion.

If an insidious secret political and criminal organization such as the Knights of the Ku Klux Klan, grown to such power in any state, as to become a "super-government" by dominating practically all of its officers, administrative, legislative and judicial, and in the exercise of its sinister purposes, through the control of these various officers, it can wrongfully remove a governor from his high office without the hope of redress, then it would appear that the general union of states might themselves be threatened with danger.

If it be true, as contended, that one occupying the high office of governor has no such property rights in the office as to be permitted to claim protection under the Federal Constitution, then it must be on account of a reversal of the rule by judicial construction. If the actual sources of state power may be poisoned by corruption or controlled by violence, intimidation and outrage, without legal restraint within either the state or Federal governments, then it would seem that not only the states, but that the general country, is in danger and its best powers, its highest purposes, the hopes which it inspires and the love which enshrines it, are at the mercy of the combinations of a lawless mob and those who respect no right but brute

force on the one hand and polluted corruption on the other.

With great respect, but with faint hope, we commit to this great Court our case for consideration and final decree.

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In the Supreme Court of the United States

OCTOBER TERM, 1923

In Equity No. 689

JOHN C. (J. C.) WALTON, *Appellant*,
vs.
THE HOUSE OF REPRESENTATIVES OF THE STATE OF OKLAHOMA, et al., *Appellees*,

Brief on Behalf of The House of Representatives of the State of Oklahoma, et al.

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JOHN C. (J. C.) WALTON, *Appellant*,

vs.

THE HOUSE OF REPRESENTATIVES OF THE STATE OF OKLAHOMA, and its Speaker, W. D. McBee, Isaac W. Gray, Chief Clerk, and the Board of Managers, to-wit: Wesley E. Disney, James R. Tolbert, D. A. Stovall, T. H. Wren, W. J. Otjen, Jess L. Pullen, and Leslie E. Salter; M. E. Trapp, Lieutenant Governor; and the Knights of the Ku Klux Klan or Invisible Empire of the State of Oklahoma, and N. C. Jewett, the Grand Dragon and Chief Executive Officer of said Association, *Appellees*.

Brief on Behalf of The House of Representatives of the State of Oklahoma; Its Speaker, W. D. McBee; Isaac W. Gray, Chief Clerk; The Board of Managers, to-wit: Wesley E. Disney, James R. Tolbert, D. A. Stovall, T. H. Wren, W. Otjen, Jess L. Pullen, and Leslie E. Salter; and M. E. Trapp, Lieutenant Governor, Appellees.

STATEMENT

This is an appeal from a decree of the United States District Court for the Western District of Okla-

homa in which said court, upon motion of the Appellees participating in this brief, dismissed the Appellant's bill of complaint and the supplement thereto.

The Appellant began an action in said District Court, on the sixth day of November, 1923, by the filing of a bill of complaint against the Appellees, praying that the latter be restrained from proceeding with a trial upon the impeachment of the Appellant as Governor of the State of Oklahoma, and from interfering with said Appellant as Governor of the State of Oklahoma. Among other things, and in verbose style, plaintiff alleged a conspiracy on the part of the Appellees and certain State Senators of the State of Oklahoma, and other parties not defendant, to impeach and remove Appellant from office as Governor of the State of Oklahoma; and that by reason of and in pursuance of said conspiracy, the said Appellee, House of Representatives, through the Appellee's Board of Managers, had presented Articles of Impeachment against him to the State Senate of the State of Oklahoma. He then alleged that by reason of said conspiracy, and by reason of acts of certain parties not made parties defendant, the Appellant could not be accorded a fair and impartial trial upon said impeachment, thus depriving him, as alleged, of the equal protection of the laws, due process of law, and of his property, all in violation of the Fourteenth Amendment to the Constitution of the United States. On November seventh, upon application of Appellant for a Temporary Restraining

Order, the bill was presented to the said District Court and the said restraining order was denied.

Appellant later filed a Supplemental Bill showing that he has been convicted by the State Senate Court of Impeachment and had been ordered removed from the office of Governor of the State of Oklahoma. He renewed the prayer of his original bill. To both Bills of Complaint, the Appellees participating in this brief filed their Motion to Dismiss; and, on the twenty first day of November, 1923, the said District Court, after hearing the argument upon said Motion, entered its decree dismissing Appellant's original Bill of Complaint and the supplement thereto. From this decree, appeal was made to this Court.

The appellant herein, made application to the Supreme Court of the State of Oklahoma for a Writ of Certiorari, which was denied, and thereafter filed in the Supreme Court of the United States his petition for Writ of Certiorari, same being cause No. 712, wherein appellant herein sought to invoke the jurisdiction of this court and to have this court grant such Writ directing the Senate of the State of Oklahoma, sitting as a Court of Impeachment, to certify the record in the impeachment trial to this court.

The petition of the petitioner in cause No. 712 above referred to contains substantially every averment that is contained in the petition of the appellant in this action.

On the 21st day of January, 1924, this court de-

clined to grant such relief or take jurisdiction and entered an order denying the Writ. The legal questions involved in this action are the same as were sought to be adjudicated in the action above referred to. They have already been tried and determined by this court, against appellant herein.

The Bill was dismissed for the following reasons:

I.

That the said bill of complaint does not state such a case as to entitle the plaintiff to the relief prayed, or to any other relief.

II.

That it appears upon the face of said bill of complaint that this court has no jurisdiction of the subject matter of this cause.

III.

That the judicial power of this court does not extend to the granting of the relief prayed for, nor for any relief against these defendants and in favor of this plaintiff.

IV.

That it appears from said bill of complaint that the supposed grounds of jurisdiction of a federal court are frivolous, with no facts alleged sufficient to show or make it appear that any real substantial federal question is involved.

V.

That there is no equity in said bill of complaint.

By permission of the Court, the said Motion to Dismiss was extended to the Supplemental Bill of Complaint also.

BRIEF AND ARGUMENT

I.

The Supreme Court of the State of Oklahoma, construing the State Constitution, has held that the Legislature, being given definite governmental powers and functions, has exclusive jurisdiction over matters of impeachment and that the House of Representatives have full and ample authority to prosecute such charges before the bar of the State Senate at this time; and the construction of the State Court of state constitutional provisions is binding on the Federal Courts.

It has been an unquestioned rule of Federal authority that once a state court has ruled upon a construction of its state constitution, such construction will be accepted as binding on the Federal courts. Such a holding as was made in the case of *Orr* vs. *Allen*, 248 U. S. 35, 63 L. Ed. 109, has been, for a number of years, so well settled as to dispense with any necessity of extensive argument. There, the Supreme Court of the United States, said:

> "The Federal Supreme Court will not assume that the Constitution of a State forbids the exercise of a legislative power which the highest court of the state has expressly held that the legislature possesses."

Hence, it is beyond question that the construction placed upon the Oklahoma Constitution, by the State Supreme Court, relative to the functions of the Legis-

lature in impeachment proceedings, is final and conclusive. The same is true to the status of the Defendant M. E. Trapp, as Acting Governor.

For the purpose of brevity, the syllabi only, of the case of *State of Oklahoma, ex rel. M. E. Trapp, Acting Governor of the State of Oklahoma* v. *Tom G. Chambers, Sr., District Judge of Oklahoma County, and J. C. Walton,* (*Supreme Court of Oklahoma,*) 220 Pac. 890, *decided November* 7th, 1923, is herewith quoted.

> 1. "The Legislature, being otherwise in legal session, is, by the Constitution, given definite governmental duties and has exclusive jurisdiction over matters of impeachment, and the actions of the Senate and House of Representatives, in the exercise of this jurisdiction, are not subject to review or interference by the Courts."
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> 2. "'Impeachment' of the Governor, within the meaning of Section 16, Article VI., of the Constitution, is the adoption of Articles of Impeachment and the presentation thereof to the Senate and the indication by that body that the same are accepted for the purpose of permitting prosecution thereof; and the impeachment of the Governor operates to suspend him, the duties and emoluments of the office automatically devolving upon the Lieutenant Governor for the remainder of the term until the disability is removed by the acquittal of the Governor of the charges preferred against him."
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> 3. "During the pendency of an impeachment, the Lieutenant Governor is the Chief Executive

officer of the State; and the suspended Governor, being a mere private citizen, may not interfere with the former in the rightful exercise of his duties, either by force or by legal proceedings."

4. "The issuance of an injunction by a district court against the Lieutenant Governor, preventing him from assuming the duties as acting governor, is an encroachment upon the Executive Department and an attempt to pass upon questions solely within the province of the other governmental departments, and Prohibition will lie to prevent this unwarranted and unauthorized application of judicial force."

6. "This Court has the power to issue injunctions in support of its decisions; and where it is shown that a private citizen is attempting to interfere with the Acting Chief Executive of the State, and this Court having determined that such interference was unwarranted, *held,* that injunction should issue to restrain that person from such interference."

These quotations, showing the ruling of the State Supreme Court upon the meaning of the Constitution must necessarily close any question as to the fact that both the Legislature and M. E. Trapp were officiating as authorized departments of the State Government. The conclusion reached could not have been developed except with these facts as a premise.

II.

A suit instituted against the House of Representatives and its duly authorized officers and against the Act-

ing Chief Executive of the State to restrain them in performing their official duties as authorized by law is a suit against the State of Oklahoma in violation of the Eleventh Amendment to the Federal Constitution.

That the Appellees herein participating were acting within the scope of their authorized official functions was clearly decided by the opinion of the State Court, herein above quoted.

The question, therefore, next to be answered is: Is this, in effect, a suit against the State of Oklahoma? It is true that the State is not a nominal party, but this fact is of little weight.

In the early case of *Osborne* v. *U. S. Bank*, 9 Wheat. 736, 6 L Ed. 204, Marshall, Chief Justice, announced the rule as seen by him, in the following words:

> "It may, we think, be laid down as a rule which admits of no exception, that, in all cases where jurisdiction depends upon the party, it is the party named in the record. Consequently, the eleventh amendment, which restrains the jurisdiction granted by the Constitution over suits against states, is, of necessity, limited to those suits in which a state is a party on the record. The amendment has its full effect if the constitution be construed as it would have been construed had the jurisdiction of the court never been extended to suits brought against the state by the citizens of another state or by aliens."

But this decision was handed down in a day of

strict legal technicality and it was not long after that Mr. Justice Marshall, himself, recognized that the rule that was becoming fixed was not satisfactory. Therefore, in the slightly later case of *Georgia* v. *Madrazo*, 1 Pet. 110, 7 L. Ed. 73, after quoting portions of the Osborne case, he cited the case of *Georgia* v. *Brailsford* 2 Dall, 402, where the action was not in the name of the State but was brought against the Governor in its behalf, and said:

> "If, therefore, the state was properly considered as a party in that case, it may be considered as a party in this. * * * The claim is upon the governor as a governor. He is sued not by his name, but by his title. The demand made upon him is not made personally but officially. The decree is pronounced, not against the person, but the officer, and appeared to have been pronounced against the successor of the original defendant. * * * *In such case, where the chief magistrate of a state is sued, not by his name, but by his style of office, and the claim made against him is entirely in his official character, we think the state itself may be considered as a party on the record.* * * * *No person in his natural capacity is brought before the court as defendant.*"

Following this reasoning and constituting, possibly the most enlightening decision on this subject from the Federal Supreme bench, is the case of *In re* Ayers, 123 U. S. 443, 31 L. Ed. 216, which has been consistently cited and quoted by practically all decisions upon State immunity since its rendition.

In the Ayers case, the Attorney General and

Commonwealth Attorneys for the State of Virginia were made parties to an injunction proceeding to restrain them from instituting certain suits under an admittedly unconstitutional law. It was further conceded that the institution of these suits would impair the obligation of valuable contracts of the plaintiffs, yet, the court said:

> "*The relief sought is against the defendants, not in their individual, but in their representative capacity as officers of the State of Virginia.* The Acts sought to be restrained are the bringing of suits by the State of Virginia in its own name for its own use. If the State had been made defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subjected to the jurisdiction of the Court by process served upon its Governor and Attorney General, according to the precedents in such cases. (Citing authorities.) If a decree could have been rendered enjoining the State from bringing suits against its taxpayers, it would have operated upon the State only through the officers who by law were required to represent it in bringing such suits, viz: the present defendants, its Attorney General, and the Commonwealth's attorneys for the several counties. For a breach of such an injunction, these officers would be amenable to the Court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment.
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> "The nature of the case supposed is identical with that of the case as actually presented in the bill, with the single exception that the state is not

named as a defendant. *How else can the state be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys, and agents are personally subjected to the process of the Court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subjected to the jurisdiction of the Court as actual defendant?*" (Emphasis supplied).

The Court then proceeded to discuss the contention that the Court had the power to enjoin officers in attempting to enforce an unconstitutional statute, and the authorities urged in support of this proposition. This contention was definitely exploded as being entirely too broad; and the true rule was stated to be that an action of this nature may be sustained only in those instances where the Act complained of, considered apart from the official authority alleged as its justification, *and as the personal act of the individual defendant, constituted a violation of right for which the plaintiff was entitled to a remedy at law or in equity against the wrongdoer in his individual character.*

Continuing, the Court stated:

"The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with the large residuum of sovereignty which had not been

delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other states or aliens, *or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the mandates of judicial tribunals* without their consent, and in favor of individual interests. *To secure the exemption guaranteed by the Eleventh Amendment requires that it should be interpreted, not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish its purpose. In this spirit it must be held to cover, not only suits brought against a State by name, but those also against its officers, agents and representatives,* where the state, though not named as such, is, nevertheless, the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates. * * *

"It is ordered, therefore, that the petitioners be discharged." (Emphasis supplied.)

From the other courts of the land have come like decisions; and in nearly every court passing upon the proposition, the holding has been that the nominal parties to the record are of no more than passing interest to the decision. Representative of this line of state authorities are the cases of *Salem Mills* vs. *Lord,* 42 Or. 94, 69 Pac. 1037 and *Pitcock* vs. *State,* 91 Ark.—, 121 S. W. 742. An excellent discussion is likewise contained in the cases of *Hopkins* vs. *Clemons Agricultural College,* 221 U. S. 642, 55 L. Ed. 894, 35 L. R. A. (N. S.) 243 and *Columbia Water Power Co.* vs. *Columbia Ele., etc., Co.,* 43 S. C. 431, 20 S. E. 1007.

Therefore, it may be seen that the language of the Oklahoma Court, in the case of *Love* vs. *Filtsch*, 33 Okla. 131, 124 Pac. 30, was in line with the established authority, when it was asserted that:

> "Suits against officers of a state, as representing the State in action and liability, and in which the States, although not a party to the record, is the real party against which relief is sought, and in which a judgment for the plaintiff, although nominally against the defendant as an individual, could operate to control the action of the State or subject it to liability, are suits against the State."

See also: *State Banking Board* vs. *Oklahoma Bankers' Trust Company* 49 Okla. 72, 151 Pac. 566; *Farish* v. *State Banking Board*, 235 U. S. 498, 59 L. ed. 330; *National Surety Co.* vs. *State Banking Board*, 49 Okla. 184, 152 Pac. 389. The foremost of the cases arising from the state of Oklahoma, however, is that of *Lankford* vs. *Platte Iron Works*, 235 U. S. 461, 59 L. ed. 316; and therein the Supreme Court of the United States said:

> "Is the suit one against the State? The appellee earnestly contends that the answer should be in the negative. 'An action,' counsel say, 'against a state officer to compel him to perform duties prescribed by law is not an action against the state. An officer who refuses to obey the laws does not stand for the state, within the meaning of the Federal Constitution.' • • •
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> "In Lovett vs. Lankford, composing the bank-

ing board of the state of Oklahoma, (— Okla. —, 145 Pac. 767), the supreme court of Oklahoma decided, citing the Cockrell case (State ex rel. Taylor vs. Cockrell, 27 Okla. 630, 112 Pac. 1000), that the defendants in error in the case composing the banking board were 'executive officers of the state, and in the performance of their duties in administering the law under consideration (the guaranty fund act) do so as officers, and the property intrusted to their control and management by the law is property owned by the state, or property in which the state has an interest', and that therefore a suit against them to compel their administration of the depositors' guaranty fund 'is, in fact, a suit against the state; and in the absence of the consent of the state, the same cannot be maintained.' * * * Any other view, the court in effect said, would not only substitute the judgment of a court for that of the officials, 'but would harass and create confusion, the effect of which would destroy the efficiency of such board.' The case of Columbia Bank & T. Co. v. United States Fidelity & G. Co., 33 Okla. 535, 126 Pac. 556, give especial emphasis to the principle announced. * * *

"It will serve no purpose to review the cases cited by the appellee in which state officers were enjoined from doing unlawful acts, prescribed, it may be, by unconstitutional laws, or [illegible] valid laws to perform specific duties. Examples of such cases are reviewed and distinguished in Murray v. Wilson Distilling Co. and there is a later example in Hopkins v. Clemson Agri. College, 221 U. S. 636, 55 L. ed. 890, 35 L. R. A. (N. S.) 243, 31 Sup. Ct. Rep. 654, * * * A duty being prescribed, it is further contended the officers cannot seek shelter behind the state for the abuse of their discretion in office.

'But these contentions and the arguments based upon them all depend upon an incorect version of the statute, as we have seen."

There are, of course, cases where the judiciary will step in and grant a writ of injunction or mandamus upon a request therefor, by an interested party. This was begun, and is still recognized as proper, when a law requires an Executive officer to do an act requiring no discretion, or where he commits an act which is in violation of law and constitutes a trespass by him personally.

Kendall vs. *United States,* 37 U. S. 522, 9 L. ed, 1181;
United States vs. *Black,* 128 U. S. 41, 32 L. ed. 355;
Louisiana vs. *McAdoo,* 234 U. S. 627, 58 L. ed. 1056.

In the latter case, a most concise statement was made, apposite to this line of cases, and the distinction between them and those of the nature of the one at bar. MR. JUSTICE LURTON said:

"There is a class of cases which hold that if a public officer be required by law to do a particular thing, not involving the exercise of either judgment or discretion, he may be required to do that thing upon application of one having a distinct legal interest in the doing of the act. But if the matter in respect of which the action of the official is sought is one in which the exercise of either judgment or discretion is required, the courts will refuse to substitute their judgment or discretion for that of the of-

ficial intrusted by law with its execution. Interference with him in such a case would be to interfere with the ordinary functions of government. (citing numerous authorities)."

But it is, as said, equally as well settled, that neither injunction nor mandamus will lie against an executive officer to control him in the discharge of an official duty which requires the exercise of his judgment or discretion.

Decatur vs. *Paulding*, 39 U. S. 496, 10 L. ed. 559;
United States v. *Black*, *supra*;
United States vs. *Hitchcock*, 190 U. S. 316, 23 Sup. Ct. 698, 47 L. ed. 1047;
and cases cited in
Louisiana vs. *McAdoo*, *supra*.

There is a distinct difference between "jurisdiction" and "judicial power" within the meaning of the Federal Constitution, and this is emphasized by the Eleventh Amendment.

All of the facts stated in a petition *may* be sufficient to warrant an exercise of "jurisdiction" on the part of the Court. But our form of government is subdivided by reference to "powers"; and these powers may be roughly classed as "Judicial powers", "Executive powers" and "Legislative powers", also, "Powers of the States" and "Powers of the Federal Government."

All of these "powers" being exercised by the

different governmental departments as agents of the ultimate government, the people, they must be exercised in strict conformity to the grants or delegations of the Constitution.

Hence, admitting for the moment, that sufficient judicial facts were alleged in the Appellant's bill, if, under the authorities heretofore quoted, it appeared that the State of Oklahoma was the real party to answer to the call of the Court, the Eleventh Amendment restricts the prima facie "jurisdiction", and reminds that:

> "The *Judicial Power* of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State."

It therefore becomes necessary only to refer to the words of the Supreme Court in the case of *In Re: State of New York*, 256 U. S. 490, 65 L. Ed. 1057, to close the question that may exist that the judicial power of the court does not extend to such a suit as is here presented. The court said:

> "That a state may not be sued without its consent is a fundamental rule of jurisprudence, having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a state, without

consent given; nor one brought by citizens of another state, or by citizens or subjects of a foreign state, because of the 11th Amendment; *and not even one brought by its own citizens, because of the fundamental rule of which the Amendment is but an exemplification.*" (Emphasis supplied.)

This case is probably the *latest* from the Federal Supreme Court, relating to the subject, and it refers, with approval, to each of the Supreme Court cases heretofore quoted, and to numerous others of similar import. The only conclusion must be, therefore, that the court had not the "*power*" to grant the relief prayed for, all "jurisdictional" facts admitted.

III.

The Federal question presented is frivolous, and the bill fails to allege a substantial Federal question since it is based solely upon the 14th Amendment to the Federal Constitution, and the same is clearly inapplicable.

Passing, therefore, from the question of power of the court to issue the relief prayed for, it is also clear that the bill failed to allege facts which constitute a federal question, sufficient upon which to base jurisdiction for injunctive relief.

The 14th amendment only purports to protect citizens from being deprived of life, liberty or property without due process of law. Yet it is clear that the appellant neither claimed that these state officers were attempting to deprive him of life or liberty by their prosecution of the impeachment.

His allegations, therefore, were, and must have been based upon the predicate that his incumbency in the office of Governor was a property right. This, has been, by the courts, almost uniformly denied.

Throop on Public officers, Section 345, p. 345, says:

> "In this country an office is not regarded as property, nor has the officer any vested rights therein, which are within the protection of the United States, Constitution, or the general provision of a state constitution, forbidding legislative interference with property or vested rights."

And the Supreme Court of the United States in the case of *Taylor and Marshall* v. *Beckham*, 178 U. S. 548, 44 L. Ed. 1187, affirming 108 Ky. 278, 56 S. W. 177, rendered a strong opinion which is doubtless decisive of the case at bar. See 178 U. S. 572. But this is not the only decision on the subject, for as was said by Throop, the great weight of authority affirms the position that was taken by the Iowa Court in the case of *Shaw* v. *Marshalltown*, 131 Iowa 128, 104 N. W. 1121, 10 L. R. A. (N. S.) 825 wherein it was held that:

> "The 14th Amendment declares that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States. The privileges and immunities here protected are those of citizens of the United States, as distinguished from the citizens of a state, and the 14th Amendment deals only with the rights of citizens of the United States as such. Blake v. McClung, 172 U. S. 239, 43 L. Ed. 432, 19 Sup. Ct. Rep. 165; Slaughter House cases; 16 Wall. 36, 21 L. Ed.

394. * * * *A public office has in it no element of property,* but it is rather a personal public trust, created for the benefit of the state and not for the benefit of the individual citizens thereof. Nor are the prospective emoluments of a public office property in any sense, for the salary or other perquisites may be reduced or otherwise regulated by law at all times, unless such change is forbidden by the Constitution. Bryan v. Cattell, 15 Iowa, 553; Ex parte Lambert, 52 Ala. 79; Taylor v. Beckham, 178 U. S. 548, 44 L. Ed. 1187, 20 Sup. Ct. Rep. 890, 1009; Donahue v. Will County, 100 Ill. 94." (Emphasis supplied.)

See also:

Moore v. *Strickland*, 46 W. Va. 515, 33 S. E. 274, 50 L. R. A. 279;
Atty-Gen. ex rel Rich. v. *Jochim*, 99 Mich. 358, 58 N. W. 611, 23 L. R. A. 699; and
French v. *Senate* (Cal.) 69 L. R. A. 556.

This latter case, though relating to the expulsion of a member of the Senate by that body, is peculiarly applicable to the case at bar.

The second syllabus reads as follows:

"Allegations in a petition by persons expelled from a state legislature to secure reinstatement, that they were expelled without hearing or opportunity for defense, will not be taken as true, even against a demurrer, where the record of the proceedings, of which the court takes judicial notice, shows that charges were preferred, referred to a committee which reported an investigation, and that the charges were true, and that the report was taken up and considered by the body, at which time petitioners

had an opportunity to be heard in their own behalf." And syllabus 6th reads:

> "The title to a public office is held subject to the constitutional provision giving the right of removal."

Treating this proposition, in the opinion, it was said:

> "The Senate having expelled the petitioners in the manner prescribed by the Constitution, in the exercise of the power therein given, it is not true that they have been deprived of the right to office without due process of law."
>
> "With respect to the possible abuse of such power, the case is analogous to that of the president of the United States with respect to officers of the United States subject to arbitrary removal by him. In regard to this, the Supreme Court of the United States says that the only restraint upon the abuse of the power 'must consist in the responsibility of the President, under his oath of office, to so act as shall be for the general benefit and welfare. Shurtleff v. United States, 189 U. S. 317, 47 L. Ed. 832, 23 Sup. Ct. Rep. 535. The same is true of the power of the Senate here under consideration. The oath of each individual member of the Senate, and his duty to act conscientiously for the general good, is the only safeguard to the fellow members against an unjust and causeless expulsion."

It therefore being clearly determined that the right claimed by the appellant was not a property right or one within any provision of the Federal Con-

stitution, the jurisdiction of the court was lacking in a necessary particular. The absence of diversity of citizenship or other extraneous facts makes the presence of a Federal question indispensable; and in its absence, the dismissal of the bill is the only course which can be consistently maintained by the weight of prior judicial decisions.

The case of *In Re Sawyer*, 124 U. S. 200, 31 L. Ed. 402, is almost directly in point with the present proposition in both facts, and the purport of our contentions. In order that our position may be more firmly established, therefore, we quote from portions of that admirable opinion.

At page 217 of the official reports, appears the following:

> "The whole object of the bill in equity filed by Parsons, the police judge of the city of Lincoln, against the Mayor and Councilmen of the city, upon which the Circuit Court of the United States made the order, for the disregard of which they are in custody, is to prevent his removal from the office of police judge. No question of property is suggested in the allegations of matters of fact in the bill, or would be involved in any decree that the Court could make thereon. * * * (217) * * * The bill prays for an injunction to restrain the Mayor and Councilmen of the city of Lincoln from proceeding any further with the charges against Parsons, or taking any vote on the report of the Committee, or declaring the office of police judge vacant, or appointing any person to fill that office."

The court, after discussing the nature of the contemplated proceeding and showing that, as a judicial inquiry, federal statutes prohibited jurisdiction (which statute will be hereafter discussed), then stated:

> "But if those proceedings are to be considered as neither criminal nor judicial, but rather in the nature of an official inquiry by a municipal board entrusted by law with the administration and regulation of the affairs of the city, still, their only object being the removal of a public officer from his office, they are equally beyond the jurisdiction and control of a court of equity.
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> "The reasons which preclude a court of equity from interfering with the appointment or removal of public officers of the government from which the court derives its authority apply with increased force when the court is a court of the United States and the officers in question are officers of a State. If a person claiming to be such an officer is by the judgment of a court of the State, either in appellate proceedings or upon a mandamus or quo warranto, denied any right secured to him by the Constitution of the United States, he can obtain relief by a writ of error from this court. * * * (221) * * *
>
> "But the ground of our conclusion is, that, *whether the proceedings of the council of Lincoln for the removal of the police judge, upon the charge of misappropriating moneys belonging to the city, are to be regarded as in their nature criminal or civil, judicial or merely administrative, they relate to a subject which the Circuit Court of the United States,* sitting in equity, has no jurisdiction or power over, and can neither try and determine for itself,

nor restrain by injunction the tribunals and officers of the State and City from trying and determining." (Emphasis supplied.)

And on page 222, MR. JUSTICE FIELD, in a concurring opinion, tersely said:

> "I concur in the judgment of this Court, that the Circuit Court of the United States had no jurisdiction to interfere with the proceedings of the Mayor and common council of Lincoln for the removal of the police judge of that city. *The appointment and removal of officers of a municipality of a State are not subjects of cognizance of the courts of the United States.* The proceedings detailed in the record in the present case were of such an irregular and unseemly character, and so well calculated to deprive the officer named of a fair hearing as to cause strong comment. *But, however irregular and violent, the remedy could only be found under the laws of the State* and in her tribunals. The police judge did not hold his office under the United States, and in his removal the common council of Lincoln violated no law of the United States. On no subject is the independence of the authorities of the State and her municipal bodies, from federal interference in any form, more complete than in the appointment and removal of their officers." (Emphasis Supplied.)

IV.

Equity does not take cognizance of political controversies but leaves the parties to their legal remedy, which, in this case was plain, adequate and speedy.

At the hearing on the application for a Temporary Restraining Order, the District Court rendered

a memorandum opinion which is now reported in the printed record of this cause. This memorandum opinion stated the preponderant weight of authority when it settled, beyond any possibility of doubt, that equity will not take cognizance of political matters. COTTERAL, DISTRICT JUDGE, *in that opinion, stated*:

> "The relief is necessarily of a political nature. But equity does not have cognizance of political controversies, and its jurisdiction may not be invoked as an aid to a candidate for, or an incumbent of, an office, without an enabling statute; and none has been enacted on the subject. Giles v. Harris, 189 U. S. 475. Ex Parte Sawyer, 124 U. S. 548."

The question is not within the exception mentioned in the Oklahoma case of *Walton, Mayor* v. *Donnelly, Commissioner*, 83 Okla. 233, 201 Pac. 374, wherein the State Court held that an incumbent might prevent another officer from interfering with the rightful exercise of the duties of the office of the former, there being no controversy over the actual possession to the title to the office itself.

The distinction is that the State law, as decided by the highest court of the State, in the case of *State ex rel. Trapp* v. *Chambers, supra*, conclusively barred Appellant from any pretense of authority to function as the Governor of Oklahoma, he having been suspended, and "*the said office*, with its compensation," devolving upon the Lieutenant Governor. That such decisions are both binding and conclusive upon the Federal Courts has been long a closed question, they

being the State's own construction of its own Constitution and laws.

See:

Orr v. *Allen, supra.*

The ruling of the court, above quoted, is supported by ample and weighty authority from practically every court in the Union.

Injunctions are a distinctly equitable remedy, appealing to the conscience of the chancellor, for the prevention of great and irreparable injury. That this injury must be to the person, liberty or property of the plaintiff has, in part been the basis for the decisions of the courts.

High on "Injunctions," (3rd Ed. No. 1312, states that:

> "No principle of the law of injunction, and perhaps no doctrine of equity jurisprudence is more definitely defined or more clearly established than that courts of equity will not interfere by injunction to determine questions concerning the appointment or election of public officers or their title to office, such questions being of a purely legal nature and cognizable only by courts of law."

However, the case of *Burke* v. *Leland, et al.*, 51 Minn. 355, is probably the most definite of any from the American Courts. The syllabus is as follows:

> "The title to public office and the right to exercise its functions cannot be determined in an action

for an injunction to restrain the exercise of such functions, *but in proceedings in the nature of quo warranto.*" (Emphasis supplied.)

The Supreme Court of the State of Oklahoma in a long line of decisions has held that title to office may not be litigated or determined by means of injunction. See the case of *Ewing* v. *Turner*, 2 Okla. 94, 35 Pac. 951. JUDGE SCOTT stated:

"The questions for determination came up on the issues as shown by the statement of the case.

"Can the controversy between the parties be settled without a trial of the title to the office of the treasurer of the board of regents of the Agricultural and Mechanical College? If the title to this office will necessarily become involved in the determination of this controversy, *the court in the very beginning will encounter a rule of law so well established in our jurisprudence as to admit of no controversy. It is so well settled that mandamus will not lie to try the title to an office that the subject need no discussion here or elsewhere.* If the title is not involved and the aid of the writ of mandamus were sought merely to obtain possession of the effects, monies and official belongings, a different question would be presented. * * *

"As to the writ of mandamus then, we have two settled rules as to public officers and the effects and belongings thereto: the one that mandamus will not lie to try title to a public office, and the other that it will lie to compel a predecessor to deliver to his successor the books, papers, records, monies, insigna and paraphernalia thereof when the relator

shows an absolute prima facie title. No court or lawyer of to-day, should for a moment controvert these two well settled rules of modern jurisprudence.

"It may then be asked what it takes to constitute this evidence of title. The numerous authorities above cited will abundantly answer the question. It may be stated as a general rule that when the realtor shows a certificate of election to an office, regular upon its face, *or any lawful evidence of title later and superior to any other claimant, and that he has qualified as required by law, this may be deemed a prima facie title.*

"Even if nothing more could be claimed for the Commission issued to Carruthers, (The relators successor) *it has the effect to cloud the title of the relator and render it impossible for him to show a prima facie right to the enjoyment of office or to the possession of the effects thereof.*"

See also:

Cameron v. *Parker*, 2 Okla. 277, 38 Pac. 14.
Howe v. *Dunlap*, 12 Okla. 467, 72 Pac. 365,

which is peculiarly in point as is shown by the following quotation taken from said case:

"First, it will be noticed that the act of removal took place on the 11th day of February, and that this action was commenced on the 20th day of February, nine days after the removal had taken place. Injunction is a preventative remedy, and even if it would lie to prevent the removal in any case, this action was not brought in time. But even if the action had been commenced in time, before the ouster,

and if the object of the petition had been to restrain the mayor and council from ousting the plaintiff from his office, still such action could not be maintained, because a court of equity will not entertain an action to enjoin the removal of a municipal officer against whom charges of misconduct in office have been preferred. (Muhler v. Hedekin, 20 N. E. 700.)

"The authorities are uniform in holding that a proceeding in the nature of an official inquiry concerning the conduct of a public officer by the council or other body, the possible end being the removal of the officer, are wholly beyond the control of a court of equity. The subject matter of the jurisdiction of courts of chancery relates solely to civil property. Injury to property, either actual or threatened is the foundation of chancery jurisdiction. *In no case is it concerned with matters of a purely political nature. Sheridan* v. *Colvin*, 78 Ill. 237."

See also the case of *State ex rel* v. *Smith*, 43 Okla. 231, 142 Pac. 408, 1915 L. R. A. 832.

See also:

McAllen v. *Rhodes*, 65 Texas 348;
Mosiam v. *Wedber, Supt.* (Nebr.) 187 N. W. 109;
Civic League v. *City of St. Louis*, (Mo.) 223 S. W. 891;
Hogan v. *Hamilton County*, 132 Tenn. 554. 179 S. W. 128;
State Ex rel Keyser v. *Babst* (Ohio) 218 N. E. 140.
Doss v. *Howard* (Ky.) 202 S. W. 888;
Casey v. *Bryce*, 173 Ala. 129, 55 So. 810.

Hubbel v. *Armijo* (N. M.), 85 Pac. 1046;
Scott v. *Sheehan*, (Cal.) 79 Pac. 353;
People ex rel v. *District Court*, (Colo.) 68 Pac. 224;

and

State ex rel v. *Judge, etc* (La.) 21 So. 94.

All of these cases are to the same effect as the memorandum opinion; and it is clear from them, and others, that the legal remedies such as quo warranto are sufficient and exclusive in determining titles to office. *A fortiori, under Section 267 of the Judicial Code equitable jurisdiction cannot attach in Federal Courts.*

Pomeroy in his work on Equity Jurisprudence (4th Ed.) Volume 5, Section 1889, sums this up in the following manner:

> "The legal remedy is ordinarily considered as adequate in cases of torts to the person, and to property held by a legal estate, and equity does not interfere."

And the United States Supreme Court, in the case of *In re Debs*, 158 U. S. 564, 39 L. Ed. 1092, speaking of a threatened commission of a crime or wrong, said:

> "Something more than the threatened commission of an offense against the laws of the land is necessary to call into exercise the injunctive powers of the Court. There must be some *interferences*, actual or threatened, with property or rights of a pecuniary nature; but when such interferences ap-

pear, the jurisdiction of a Court of Equity arises, and is not destroyed by the fact that they are accompanied by or are themselves violators of the criminal law."

As has already been shown, the rights involved, here, are not property rights and the requisite mentioned in the Debs case is, therefore, lacking; but on the other hand, the legal political remedies being disregarded, no allegation appeared that precluded the assumption that the Appellant might adequately salve his hurt with damages, in case he was damaged as he chose to assert.

A most interesting case, along this line, is that of *Long* v. *Southern Exp. Co.*, 202 Fed. 462, 120 C. A. 568, where the circuit court held that a bill to restrain the defendant from receiving illegal liquor shipments in detriment to complainants' rights was without equity. See also: *Heber* v. *Portland Gold Mining Co.*, (Colo.) 172 Pac. 12, L. R. A. 1918 D, 681.

The fact is, and it may not be successfully controverted, that an adequate legal remedy *does* exist, if there be any injury, and the Appellant should be forced to stand upon that remedy rather than to have the assistance of the "strong arm of equity" undeserved.

V.

The bill does not contain any allegation of irreparable injury to be occasioned by the plaintiff, but is based entirely upon anticipatory and imaginary wrongs.

Distinguishing itself from the nature of interest requiring protection, i. e., life, liberty or property, which has been hertofore discussed, is the nature of the injury requiring prevention. Certain types of injury are recognized by equity as warranting injunctive relief, whereas others are considered of insufficient moment to justify a resort to that extraordinary, summary remedy. Among this latter class is what is commonly termed "anticipated injury"; and the allegations of the plaintiff's bill definitely bring his suit within this category.

Professor Pomeroy, in his work on Equity Jurisprudence, (4th Ed.) Volume 4, Section 1338, emphasizes, himself, this statement:

> *"The restraining power of equity extends, therefore, through the whole range of rights and duties which are recognized by the law, and would be applied to every case of intended violation, were it not for certain reasons of expediency and policy which control and limit its exercise."*

And High, on Injunctions, Section 9, expresses one of these limitations as that:

> "Substantial and *positive* injury must always be made to appear to the satisfaction of a court of equity before it will grant an injunction." (Emphasis supplied.)

The Texas Civil Court of Appeals, in a recent case (*Browning* v. *Hinerman*, 224 S. W. 236), discussed the general rule exhaustively, and it concluded that:

"Courts of equity will not exercise this power (injunction) to allay mere apprehensions of injury, but only where the injury is imminent and irreparable. Nor will they act where the purpose is merely the enforcement of right or the prevention of wrong in the abstract, or, as a general rule when legal questions alone are involved."

See also:

Louisville & Nashville R. Co. v. *McChord*, 103 Fed. 216;

Vicksburg Waterworks Co. v. *City of Vicksburg*, 185 U. S. 65, 46 L. Ed. 808;

Macy v. *Browne*, 215 Fed. 456, reversed in 224 Fed. 359, 140 C. C. A. 45, reversal affirmed 38 Sup. Ct. 395;

Delaware, L. & N. Ry Co. v. *Switchmen's Union of North America*, 158 Fed. 541;

Venner v. *Chicago City Ry. Co.*, 258 Ill. 523, 101 N. E. 949;

City of Lawton v. *Stevens*, 32 Okla. 476, 122 Pac. 940;

Keiser v. *Lovett*, 85 Ind. 240, 44 Am. Rep. 10;

Hamilton County Com'rs v. *Indianapolis Natural Gas Co.*, 33 N. E. 972, 134 Ind. 209;

City of Kansas City v. *Hobbs*, 62 Kans. 866, 62 Pac. 324;

Hurd v. *A. T. & S. F. Ry. Co.*, 74 Kans. 83, 84 Pac. 553;

Lester Real Estate Co., v. *City of St. Louis*, 169 Mo. 227, 69 S. W. 300;

Van Der Plaat v. *Undertakers' and Liverymens' Ass'n of Passaic County*, 70 N. J. Eq. 116, 62 Atl. 453.

The allegations of the Appellant's bill, relative

to his danger of bodily harm, are distinctly within the rule as announced. He fails absolutely to so much as connect any threatened injury with these Appellees; to even make such an allegation would be absurd. But moreover, his actual charges were nothing more than that he had been subjected to a trial by the State eSnate of Oklahoma (*not a party defendant*) and that he feared that that body would convict him. Since the presumption must have been indulged that the Senate Court of Impeachment would do its duty (to try Appellant impartially as in the qualifying oath contained) this fear was speculative in the extreme, unless however, *the evidence warranted* a conviction. In either case the relief was rightfully denied.

The supplemental bill alleged the conviction of Appellant by the Senate Court, but since they were not a party to the suit, no cognizance should be taken of threatened action by that body. Such would be outside the issues, even though members of the court be admittedly (though not so in fact) unfair.

VI.

The writ of injunction may not be granted by a Federal court to stay the proceedings in a court of a State, except in cases authorized by law relating to proceedings in bankruptcy; and this prohibition extends to the parties to a proceeding as well as to the tribunal itself.

Passing, then, from the fundamental objections to the granting of relief under a bill of the nature of that filed herein by the Appellant, we are met by express

statautory enactments forbidding the issuance of the relief prayed for.

The case of *In Re Sawyer, supra,* discussed this phase of Federal practice along with its other excellent reasons for holding that the circuit court had no jurisdiction to restrain the removal from office of the police judge by the mayor and council of the City of Lincoln. At page 219 of the official report appears the following:

> "If those proceedings (speaking of the proceedings for removal) are not to be considered as criminal or *quasi* criminal, yet if, by reason of their form and object, and of the acts of the legislature and decisions of the courts of Nebraska as to the appellate jurisdiction exercised in such cases by the judicial power of the State, they are to be considered as proceedings in a court of the State, (of which we express no decisive opinion,) the restraining order of the Circuit Court was void, because in direct contravention of the peremptory enactment of Congress, that the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except when authorized by a bankrupt act. Act of March 2, 1793, c. 22, No. 5, 1 Stat. 335; *Diggs* v. *Wolcott,* 4 Cranch, 179; *Peck* v. *Jennes,* 7 How. 612, 625 ;Rev. Stat. No. 720; *Watson* v. *Jones,* 13 Wall. 679, 719; *Haines* v. *Carpenter,* 91 U. S. 254; *Dial* v. *Reynolds,* 96 U. S. 340; *Sargent* v. *Helton,* 115 U. S. 348"

This statute was re-enacted in the Judicial Code, section 265, (36 Stat. L. 1087,) and reads as follows:

> "The writ of injunction shall not be granted by

any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The Sawyer case is the law beyond doubt and the wording of the statute is clear. An injunction may not issue to stay court proceedings.

Slaughter House Cases, 10 Wall. 273, 19 L. Ed. 915;
Haines v. *Carpenter*, 91 U. S. 254, 23 L. Ed. 345;
Dial v. *Reynolds*, 96 U. S. 340, 24 L. Ed. 644;
Rensselaer & S. R. Co. v. *Bennington & R. R. Co.* 18, Fed. 617;
M. K. & T. Ry. Co. v. *Scott*, 13 Fed. 793;
Scruggs & Echols v. *American Central Ins. Co.*, 176 Fed. 224;
Quinton v. *Equitable Inv. Co.*, 196 Fed. 314;
Maxwell v. *McDaniels*, 184 Fed. 311.

This being taken as a premise, our inquiry must be to determine: First, is the Senate Court of Impeachment a Court; and Second, is a suit against parties to the proceedings within the statute?

Naturally, the Court of Impeachment being the creature of the State, its instrument of creation must be examined to determine the constituent character. That provision is contained in the State Constitution, Article VII., Section 1, in these words:

"The judicial power of this State shall be vested in the Senate, sitting as a court of impeachment, a Supreme Court, District Courts, County Courts,

> Courts of Justices of the Peace, Municipal Courts, such other courts, commissions or boards, inferior to the Supreme Court, as may be established by law."

And construing the Constitutional status of the Senate, the Supreme Court of the State in *State of Oklahoma ex rel. M. E. Trapp*, v. *Tom G. Chambers, District Judge, et al., supra*, expressed the absolute conviction that the Senate, in trying an impeachment was a court rather than a legislative body. The Supreme Court said:

> "**** the Senate when sitting as a legislative body indicates its sense on a given proposition, by a resolution, *but when sitting as a Court*, it should indicate its judgment, on a proposition, by order *as any other* court." (Emphasis supplied.)

This declaration, coupled with the inferential determination that the Senate had properly constituted itself a court and was so acting at this time, must likewise close any question arising thereon in Federal Courts as heretofore shown.

Our sole question, therefore, is whether Judicial Code, Section 267, applies to the parties to a proceeding in the same manner as to the court itself. This question arises because of the failure to make the Senate of Oklahoma a party defendant, the bill only being directed at the Hous of Representatives (including its delegated agents) and other parties not concerned, under the allegations of the bill, with the conduct of the trial of which plaintiff complains.

However, this question has been closed by the courts already. In the case of *Whitney* v. *Wilder*, 54 Fed. 554, TOULMAN, DISTRICT JUDGE, said:

> "The prohibition of the statute extends to all cases over which the state court first obtains jurisdiction, and *applies not only to injunctions aimed at the state court itself, but also to injunctions issued to parties before the court, its officers or litigants therein. Diggs* v. *Walcott*, 4 Cranch, 179; *Peck* v. *Jennes*, 7 How. 625; *Dial* v. *Reynolds*, 96 U. S. 340." (Emphasis supplied.)

And the Ninth Circuit Court of Appeals in *Coeur D'Alene Ry. & Navigation Co., et al.* v. *Spalding*, 93 Fed. 280, re-affirmed the doctrine by saying:

> "Section 720 of the Revised Statutes provides that the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. This prohibition applies to injunctions directed to parties engaged in proceedings in the state court. Diggs v. Wolcott, 4 Cranch, 179; Peck v. Jenness, 7 How. 612; Haines v. Carpenter, 91 U. S. 254; Dial v. Reynolds, 96 U. S. 340, Ex parte Chetwood, 165 U. S. 443, 17 Sup. Ct. 385."

Likewise the sixth Circuit Court of Appeals, partially composed of Judges Taft and Lurton, in the case of *American Ass'n., Ltd.*, v. *Hurst et al.*, 59 Fed. 1, thru our present Chief Justice rendered an

opinion re-asserting the breadth of the statutory inhibition and giving the following reasons:

> "In the light of this distinction, it is clear that the act, however tortious, of an executive officer of a court, done under color of its process, is to be regarded as a "proceeding" of that court, which comity and public policy require courts of concurrent jurisdiction not to interfere with by injunctive or dispossessory process. If this be the rule of comity and public policy in the absence of a statute, it is conclusive in determining the true construction of section 720, Rev. St., and the meaning of the words used therein, "proceedings in any court of a State." That section was passed not to preserve comity and harmonious action between courts of the same sovereign exercising concurrent jurisdiction, but to attain such an end, and prevent unseemly conflict between courts of different sovereigns exercising concurrent jurisdiction over the same territory. The purpose of the statute is so important that a liberal construction should be given to accomplish it.
>
> "The decree of the court below *dismissing* the bill is affirmed." (Emphasis supplied.)

To the same effect are:

Chicago Trust & Sav. Bank v. *Bentz*, 59 Fed. 645;
Molony v. *Mass. Loan Assn.*, 53 Fed. 209;
Central Vermont Ry. Co. v. *Redmond*, 189 Fed. 683.

In the face of these authorities, Appellant's prayer that the judgment of the Court of Impeachment

be enjoined and that the said court be enjoined from issuing execution upon such judgment or enforcing same, cannot possibly stand. It is now a closed question that one cannot circumvent Section 267, Judicial Code, by enjoining the parties to the litigation; and there can be no longer any doubt that an execution is a part of the proceedings of the court. Hence, our only conclusion must be that the decision of the District Court was correct—that the relief prayed would violate, in each instance, the prohibitions of an express statute.

VII.

Federal courts will not determine abstract legal propositions in an action of injunction; and, where it appears that the relief prayed for would be unavailing, the injunction is properly denied.

The two salient features of Appellant's prayer for relief were his prayer to restrain the action of the Court of Impeachment and the levying of execution upon him. It has already been shown that the proceedings of a State Court may not be enjoined and that this includes the restraint of the parties and the enforcement of the decree. However, there is another reason, one of the fundamental rules of equitable injunctive jurisdiction, which prevents the granting of the relief in these instances.

Before the hearing upon the injunction and the motion to dismiss the bill, the trial had already taken place and the judgment removing the Appellant had

already been rendered. In view of this fact, shown by the record in Appellant's own Supplemental Bill of Complaint, a decision by the court would have been upon a mere abstract proposition of law.

The purpose of an injunction is not to afford a remedy for what is past, but to prevent future mischief. Rights already lost, or alleged wrongs already committed cannot be corrected by injunction; the party must seek his remedy elsewhere.

Lacassagne v. *Chapuis*, 144 U. S. 119, 36 L. ed. 368.
National Circle D. I. v. *National Order D. I.*, 252 Fed. 815;
United States v. *La Compagnie Francaise des Cables Telegrahiques*, 77 Fed. 495.;
Sherman v. *Clark*, 4 Nev. 138, 97 Am. Dec. 516;
Cross v. *Lawton*, 31 Okla. 49, 119 Pac. 625;
Sasser v. *Harris*, 178 N. C. 322, 100 S. E. 338;
Cecil Nat. Bank v. *Thurber*, 59 Fed. 913;
Hilliard, Injunctions, No. 5;
Corpus Juris, Injunctions, Vol. 32, page 45.

Relative to the prayer to enjoin the judgment assessing costs against Appellant, the same rule applies. Prior to the hearing on the motion to dismiss, the Senate Court of Impeachment of Oklahoma, under the authority vested in it, relieved the Appellant from the payment of costs and this was taken into consideration by the District Court under the rule of *French* v. *Senate, supra.* That rule was as follows:

"Allegations in a petition by persons expelled

from a state legislature to secure reinstatement, that they were expelled without a hearing or opportunity for defense, will not be taken as true even against a demurrer, where the record of the proceedings, of which the court takes judicial notice, shows that charges were preferred, referred to a committee, **** that the report was taken up and considered by the body at which time the petitioners had an opportunity to be heard in their own behalf."

That the State Senate Court of Impeachment, here, did relieve the Appellant from any payment of costs or the payment of any sum, is a matter of record and properly taken as true even against allegations to the contrary. For had the matter come to a trial, such records would have been judicially recognized necessarily conclusive. This view is supported by a large number of authorities from various sources.

Spencer v. *Mahon*, 75 S. C. 232, 55 S. E. 321;
Shore v. *United States*, 282 Fed. 857;
Platt v. *Carlton*, (Colo.) 168, Pac. 1118;
Venner v. *Chicago City R. Co.*, 258 Ill. 523, 101 N. E. 949.
Union Cemetery Asso. v. *McConnell*, 124 N. Y. 88, 26 N. E. 330;
Herring v. *Houston Nat. Exch. Bank*, (Tex.) 241 S. W. 534;
Wier v. *Winnett*, 155 Fed. 824;
Shera v. *Carbon Steel Co.*, 245 Fed. 589;
Thomas v. *Musical Mut. Protective Union*, 121 N. Y. 45, 24 N. E. 24;
Barber County v. *Smith*, 48 Kan. 331, 29 Pac. 565;
Corpus Juris, Injunctions, Vol. 32, page 42, No. 22, and cases cited.

It therefore being established that Appellant's removal from the office of Governor of the State of Oklahoma was the only act threatened, and this having been accomplished, he must seek his remedy elsewhere, regardless of any rights to an injunction which he might have had before the consummation of the removal. The remedy of Injunction would be entirely unavailing in this regard and the right to an action at law in the nature of quo warranto is ever present in a contest of this court.

CONCLUSION

From a consideration of the foregoing, it may be seen that the bill of Appellant was properly dismissed; first, from a lack of power on the part of the court to issue a valid order against these participating Appellees, officers of the State, representing it in action and liability; second, because the allegations of the bill, itself, are insufficient to give a Federal Court jurisdiction, since no Federal question was presented; third, because the allegations of the bill were insufficient to support any general equitable injunctive jurisdiction; and lastly, for the reason that cognizance of this type of action has been expressly prohibited by the Federal Judicial Code. There remains nothing further for consideration.

Therefore, it is respectfully urged, upon the basis

of the discussion heretofore indulged, that the decree of the District Court for the Western District of Oklahoma be affirmed with Appellant's costs.

Respectfully submitted,

THE HOUSE OF REPRESENTATIVES OF THE STATE OF OKLAHOMA; ITS SPEAKER, W. D. MCBEE, ISAAC W. GRAY, CHIEF CLERK; THE BOARD OF MANAGERS, TO WIT: WESLEY E. DISNEY, JAMES R. TOLBERT, D. A. STOVALL, T. H. WREN, W. J. OTJEN, JESS L. PULLEN, AND LESLIE E. SALTER; AND M. E. TRAPP, LIEUTENANT GOVERNOR,

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